



DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY STATE BOARD OF OPTOMETRISTS
STATUTES AND REGULATIONS

AS OF JULY 2002

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TABLE OF CONTENTS

PROFESSIONAL SERVICE CORPORATION	2
UNIFORM ENFORCEMENT ACT	9
NEW JERSEY STATE BOARD OF OPTOMETRISTS STATUTES	28
CONTACT LENS DISPENSER ACT	38
NEW JERSEY STATE BOARD OF OPTOMETRISTS REGULATIONS	40
UNIFORM REGULATIONS	68

TITLE 14A. CORPORATIONS, GENERAL
CHAPTER 17.
PROFESSIONAL SERVICE CORPORATIONS

4A:17-1. Legislative intent

It is the legislative intent to provide for the incorporation of an individual or group of individuals to render the same professional service to the public for which such individuals are required by law to be licensed or to obtain other legal authorization.

L.1969, c. 232, § 1, eff. Dec. 16, 1969.

14A:17-2. Short title

This act may be cited as “The Professional Service Corporation Act.”

L.1969, c. 232, § 2, eff. Dec. 16, 1969.

14A:17-3. Terms defined

As used in this act, the following words shall have the meanings indicated:

(1) “Professional service” shall mean any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which prior to the passage of this act and by reason of law could not be performed by a corporation. By way of example and without limiting the generality thereof, the personal services which come within the provisions of this act are the personal services rendered by certified public accountants, architects, optometrists, professional engineers, land surveyors, land planners, chiropractors, physical therapists, registered professional nurses, dentists, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropodists, veterinarians and, subject to the Rules of the Supreme Court, attorneys-at-law;

(2) “Professional corporation” means a corporation which is organized under this act for the sole and specific purpose of rendering the same or closely allied professional service as its shareholders, each of whom must be licensed or otherwise legally authorized within this State to render such professional service;

(3) “Closely allied professional service” means and is limited to the practice of (a) architecture, professional engineering, land surveying and land planning and (b) any branch of medicine and surgery, optometry, physical therapy, registered professional nursing, and dentistry;

(4) “Domestic professional legal corporation” means a professional corporation incorporated under P.L.1969, c. 232 for the sole purpose of rendering legal services of the type provided by attorneys-at-law;

(5) “Foreign professional legal corporation” means a corporation incorporated under the laws of another state for the purpose of rendering legal services of the type provided by attorneys-at-law.

L.1969, c. 232, § 3, eff. Dec. 16, 1969. Amended by L.1981, c. 425, § 1, eff.

Jan. 9, 1982; L.1986, c. 131, § 1, eff. Oct. 20, 1986; L.1991, c. 105, § 1, eff. July 16, 1991; L.1995, c. 375, § 1, eff. May 4, 1996.

14A:17-4. Application of act

This act shall not apply to any individual or groups within this State who, prior to the passage of this act, were permitted to organize a corporation and perform personal services to the public by the means of a corporation, and this act shall not apply to any corporations organized by such individual or group of individuals prior to the passage of this act; provided, however, any such individual or group of individuals or any such corporation may bring themselves and such corporation within the provisions of this act by amending the certificate of incorporation in such a manner so as to be consistent with

all the provisions of this act and by affirmatively stating in the amended certificate of incorporation that the shareholders have elected to bring the corporation within the provisions of this act.

L.1969, c. 232, § 4, eff. Dec. 16, 1969.

14A:17-5. Professional corporation and foreign professional legal corporation

(a) One or more persons, each of whom is duly licensed or otherwise legally authorized to render the same or closely allied professional service within this State, may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of the Business Corporation Act of New Jersey (Title 14A, Corporations, General, of the New Jersey Statutes), for the sole and specific purpose of rendering such professional service.

(b) A foreign professional legal corporation may render legal services of the type provided by attorneys-at-law in this State provided by that it secures a certificate of authority from the Secretary of State in accordance with Chapter 13 of the Business Corporation Act of New Jersey (Title 14A, Corporations, General, of the New Jersey Statutes) and provided further that every shareholder or employee of the foreign professional legal corporation providing legal services in this State is an attorney-at-law licensed and eligible to practice in this State under the Rules of the Supreme Court.

L.1969, c. 232, § 5, eff. Dec. 16, 1969. Amended by L.1981, c. 425, § 2, eff. Jan. 9, 1982; L.1995, c. 375, § 2, eff. May 4, 1996.

14A:17-6. Directors and officers

A professional corporation which has only one shareholder need have only one director who shall be such shareholder. Such one shareholder shall also serve as the president of the corporation. The other officers of the corporation in such a case need not be licensed or otherwise legally authorized to render the same professional service within this State, as such one shareholder. A professional corporation which has only 2 shareholders need have only 2 directors who shall be such shareholders. The 2 shareholders shall, between them, fill all the officerships of the professional corporation.

L.1969, c. 232, § 6, eff. Dec. 16, 1969.

14A:17-7. Rendering of professional service limited to licensed personnel; charges authorized

No professional corporation or foreign professional legal corporation may render professional services in this State except through its officers, employees and agents who are duly licensed or otherwise legally authorized to render such professional services within this State; provided, however, that this provision shall not be interpreted to include in the term “employee” as used herein clerks, secretaries, administrators, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by law, custom and practice to be rendering professional service to the public for which a license or other legal authorization is required in connection with the profession to be practiced, nor does the term “employee” include any other person who performs all his employment under the direct supervision and control of an officer, agent or employee who is himself rendering professional service to the public on behalf of the professional corporation; provided, that no person shall, under the guise of employment, practice a profession unless duly licensed to practice that profession under the laws of this State.

Notwithstanding any other or contrary provisions of the laws of the State, a professional corporation or foreign professional legal corporation may charge for its services, may collect such charges, and may compensate its officers, employees and agents, including those persons excluded from the term “employee” as used herein.

L.1969, c. 232, § 7, eff. Dec. 16, 1969. Amended by L.1991, c. 105, § 2, eff. July 16, 1991; L.1995, c. 375, § 3, eff. May 4, 1996.

14A:17-8. Professional relationship; personal liability; corporate liability

Nothing contained in this act shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this State applicable to the professional relationship and the contract, tort and other legal liabilities between the person furnishing the professional services and the person receiving such professional service and to the standards for professional conduct, including the confidential relationship between the person rendering the professional services and the person receiving such professional service, if any; and all confidential relationships previously enjoyed under the laws of this State or hereafter enacted shall remain inviolate. Any officer, shareholder, agent or employee of a professional corporation or a foreign professional legal corporation shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional service on behalf of the corporation in this State to the person for whom such professional service was being rendered; provided, that the personal liability of shareholders of a professional corporation, in their capacity as shareholders of such corporation, shall be no greater in any aspect than that of a shareholder-employee of a corporation organized under the provisions of the Business Corporation Act of New Jersey,¹ exclusive of this act. The professional corporation shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its officers, shareholders, agents or employees while they are engaged on behalf of the corporation in the rendering of professional service. The assets of a professional corporation shall not be liable to attachment for the individual debts of its shareholders. Notwithstanding the foregoing, the relationship of an individual to a professional corporation or a foreign professional legal corporation with which such individual is or may be associated, whether as shareholder, director, officer, employee or agent, shall in no way modify, extend or diminish the jurisdiction over such individual, of and by whatever State, agency, office or authority which licensed or otherwise legally authorized him to render service in a particular field of endeavor in this State.

L.1969, c. 232, § 8, eff. Dec. 16, 1969. Amended by L.1995, c. 375, § 4, eff. May 4, 1996.

¹N.J.S.A. § 14A:1-1 et seq.

14A:17-9. Limitations on corporate business activity

No professional corporation shall engage in any business other than the rendering of the professional services for which it was specifically incorporated; and no foreign professional legal corporation shall engage in any business in this State other than the rendering of legal services of the type provided by attorneys-at-law; provided, that nothing in this act or in any other provisions of existing law applicable to corporations shall be interpreted to prohibit such corporation from investing its funds in real estate, mortgages, stocks, bonds or any other type of investments, or from owning real or personal property necessary for, or appropriate or desirable in, the fulfillment or rendering of its professional services.

L.1969, c. 232, § 9, eff. Dec. 16, 1969. Amended by L.1995, c. 375, § 5, eff. May 4, 1996.

14A:17-10. Who may own shares; voting trust; estate ownership

(a) No professional corporation may issue any of its shares to anyone other than an individual who is duly licensed or otherwise legally authorized to render the same professional service as that for which the corporation was incorporated. No shareholder of a professional corporation shall enter into a voting trust agreement or proxy or any other type of agreement vesting another person not a shareholder of the corporation with the authority to exercise the voting power of any or all of his shares. Subject to the provisions of the corporation's certificate of incorporation, the estate of a deceased shareholder may continue to hold the shares of such shareholder for a reasonable period of administration of the estate, but shall not be authorized to participate in any decisions concerning the rendering of professional service.

(b) A foreign professional legal corporation rendering legal services in this State shall have at least one shareholder who is an attorney-at-law licensed and eligible to practice in this State under the Rules of the Supreme Court.

L.1969, c. 232, § 10, eff. Dec. 16, 1969. Amended by L.1995, c. 375, § 6, eff. May 4, 1996.

14A:17-11. Disqualification to render service

If any officer, shareholder, agent or employee of a professional corporation becomes legally disqualified to render the same professional service as that for which the corporation was organized, he shall forthwith sever all employment with such corporation and shall not, directly or indirectly, participate or share, as a shareholder, in any earnings or profits realized by such corporation on account of professional services rendered on or after the effective date of such disqualification.

L.1969, c. 232, § 11, eff. Dec. 16, 1969.

14A:17-12. Transfer of shares

No shareholder of a professional corporation may transfer his shares in such corporation except to the corporation or to another individual who is eligible to be a shareholder of such corporation.

L.1969, c. 232, § 12, eff. Dec. 16, 1969.

14A:17-13. Corporate existence; corporation to convert to business corporation; acquisition of shares of disqualified or deceased shareholder

(a) A professional corporation shall have perpetual existence until dissolved in accordance with the provisions of the Business Corporation Act of New Jersey.¹

(b) Whenever all shareholders of a professional corporation shall cease at any one time and for any reason to be duly licensed or otherwise legally authorized to render the same professional service for which such corporation was organized, or if such corporation shall for any reason fail to comply or require compliance with the provisions of this section or of section 11² of this act, said corporation shall thereupon be treated as converted into and shall operate thereafter solely as a business corporation under applicable provisions of the Business Corporation Act of New Jersey, exclusive of this act.

(c) Within 375 days following the date of death of a shareholder, or within 90 days following his disqualification to own shares in the corporation, all of the shares of such shareholder shall be transferred to, and acquired by, the corporation or persons qualified to own such shares. If such transfer and acquisition is not otherwise effected within said period, the corporation shall forthwith purchase and redeem all of his shares at the book value thereof, determined as of the end of the month immediately preceding death or disqualification. For this purpose, the book value shall be determined by an independent certified public accountant employed by the professional corporation from the books and records of the corporation in accordance with the regular methods of accounting used by it. Such determination shall be conclusive on the professional corporation and its shareholders. Nothing contained in this section shall prevent the parties involved from making any other arrangement or provision in the certificate of incorporation or by-laws, or by agreement, to transfer the shares of a deceased or disqualified shareholder to the corporation or to persons qualified to own the same, whether made before or after the death or disqualification of the shareholder, provided that within the period herein specified, all the stock involved shall have been so transferred.

L.1969, c. 232, § 13, eff. Dec. 16, 1969.

¹N.J.S.A. § 14A:1-1 et seq.

²N.J.S.A. § 14A:17-11.

14A:17-14. Corporate name

a. The corporate name of a professional corporation shall contain the full or last names of one or more of the shareholders or a name descriptive of the type of professional service in which the corporation will be engaged and shall also contain the words “chartered,” “professional association” or “a professional corporation,” or the abbreviation “P.A.” or “P.C.” The use of the word “company,” “corporation” or “incorporated,” or any other word, words, abbreviations, affix or prefix indicating that it is a corporation, in the corporate name of a professional corporation, other than the words “chartered,” “professional association” or “a professional corporation,” or the abbreviation “P.A.” or “P.C.,” is specifically prohibited. It shall be permissible, however, for the corporation and the shareholders to render professional services or to exercise its authorized powers under a name which is identical to its corporate name except that the words “chartered,” “professional association” or “a professional corporation,” or the abbreviation “P.A.” or “P.C.” is omitted.

b. Notwithstanding the provisions of subsection a. of this section, the corporate name of a professional corporation may contain the name of a deceased person only if, at the time of the person’s death:

- (1) that person's name was part of the corporate name; or
- (2) that person's name was part of the name of an existing partnership and at least two-thirds of that partnership's partners become shareholders of the professional corporation.

L.1969, c. 232, § 14, eff. Dec. 16, 1969. Amended by L.1982, c. 97, § 1, eff. July 28, 1982; L.1991, c. 50, § 1, eff. March 6, 1991.

14A:17-15. Applicable law; consolidation, merger; report, contents

The Business Corporation Act of New Jersey¹ shall be applicable to a professional corporation and to a foreign professional legal corporation except to the extent that any of the provisions of this act are interpreted to be in conflict with the provisions of the Business Corporation Act of New Jersey, and in such event the provisions and sections of this act shall take precedence with respect to a professional corporation and a foreign professional legal corporation. Except for a domestic professional legal corporation, a professional corporation organized under this act may consolidate or merge only with another professional corporation organized under this act and empowered to render the same professional service. A merger or consolidation with any foreign corporation is prohibited. A domestic professional legal corporation may consolidate or merge either with another domestic professional legal corporation or with a foreign professional legal corporation provided that the registration requirements of this act and the Rules of the Supreme Court are complied with. A professional corporation shall annually furnish a report to the office of the Secretary of State on a date designated by the Secretary of State showing the names and post-office addresses of all its shareholders, directors and officers, which shall certify that, with the exception permitted in section 6,² all such persons are duly licensed or otherwise legally authorized to render the same professional service in this State. A foreign professional legal corporation shall annually furnish a report to the office of the Secretary of State on a date designated by the Secretary of State showing the names and post-office addresses of all its shareholders, directors and officers, and shall certify that the foreign professional legal corporation is authorized to render legal services of the type provided by attorneys-at-law in its state of incorporation and further certify that the shareholders and employees providing such services in this State are attorneys-at-law licensed and eligible to practice in this State. This report shall be made on forms prescribed and furnished by the Secretary of State, but shall contain no information except that expressly called for by this section. It shall be signed by the president or vice-president and the secretary or an assistant secretary of the corporation, and acknowledged by the persons signing the report before a notary public or other officer duly authorized to administer oaths, shall be filed in the office of the Secretary of State, and shall be in lieu of the regular annual report of corporations otherwise required by the Business Corporation Act of New Jersey.

L.1969, c. 232, § 15, eff. Dec. 16, 1969. Amended by L.1982, c. 97, § 2, eff. July 28, 1982; L.1995, c. 375, § 7, eff. May 4, 1996.

¹N.J.S.A. § 14A:1-1 et seq.

²N.J.S.A. § 14A:17-6.

14A:17-16. Provisions severable; repealer

If any provision of this act or the application thereof to any person or circumstances be held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision

or application, and to this end the provisions of this act are declared to be severable. All laws and parts of laws in conflict with any of the provisions of this act are hereby repealed, to the extent so in conflict.

L.1969, c. 232, § 16, eff. Dec. 16, 1969.

14A:17-17. Construction

The provisions of this act shall not be construed as repealing, modifying or restricting the applicable provisions of law relating to incorporations, sales of securities or regulating the several professions enumerated in this act except insofar as such laws conflict with the provisions of this act.

L.1969, c. 232, § 17, eff. Dec. 16, 1969.

**TITLE 45. PROFESSIONS AND OCCUPATIONS
CHAPTER 1. GENERAL PROVISIONS**

ARTICLE 1. GENERAL PROVISIONS RELATING TO ALL PROFESSIONS AND OCCUPATIONS AFFECTED BY THIS SUBTITLE

45:1-1. Persons entitled to practice, etc. under former laws unaffected

Any person now entitled to practice any profession or to engage in any occupation, governed or regulated by the provisions of this title by virtue of any prior law, shall continue to be entitled to practice or engage in the same, notwithstanding the enactment of this title, and the validity of any license or other authorization to practice any such profession or to engage in any such occupation, heretofore issued to any person under any prior law, or of any proceeding pending to obtain such a license or authorization shall not be affected by the enactment of this title but all such persons shall in all other respects be subject to the provisions of this title.

ARTICLE 2. GENERAL PROVISIONS RELATING TO CERTAIN STATE BOARDS OF REGISTRATION AND EXAMINATION

45:1-2. Repealed by L.1971, c. 60, § 5, eff. March 25, 1971

45:1-2.1. Professional boards and commissions; application of act

The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the New Jersey Real Estate Commission, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the State Board of Social Work Examiners, and the State Board of Public Movers and Warehousemen.¹

L.1971, c. 60, § 1, eff. March 25, 1971. Amended by L.1983, c. 7, § 19, eff. Jan. 18, 1983; L.1984, c. 205, § 40; L.1989, c. 153, § 22; L.1991, c. 31, § 16, eff. Aug. 20, 1991; L.1991, c. 68, § 27, eff. March 21, 1991; L.1991, c. 134, § 15, eff. May 6, 1991.

Amended by L.1993, c. 365, § 18, eff. Jan. 4, 1994; L.1995, c. 366, § 20, eff. Jan. 5, 1996.

¹Abolition of State Board of Public Movers and Warehousemen and transfer of functions, powers and duties to the Division of consumer Affairs. See Reorganization Plan No. 008-1998, set out under § 45:14D-4.

45:1-2.2. Appointment of members by governor; public members; member from department in executive branch; quorum; vote necessary for action

a. All members of the several professional boards and commissions shall be appointed by the Governor in the manner prescribed by law; except in appointing members other than those appointed pursuant to subsection b. or subsection c., the Governor shall give due consideration to, but shall not be bound by, recommendations submitted by the appropriate professional organizations of this State.

b. In addition to the membership otherwise prescribed by law, the Governor shall appoint in the same manner as presently prescribed by law for the appointment of members, two additional members to represent the interests of the public, to be known as public members, to each of the following boards and commissions: The New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the New Jersey Real Estate Commission, the State Board of Shorthand Reporting, the State Board of Social Work Examiners, and the State Board of Veterinary Medical Examiners, and one additional public member to each of the following boards: the Board of Examiners of Electrical Contractors, the State Board of Marriage and Family Therapy Examiners, the State Board of Examiners of Master Plumbers, and the State Real Estate Appraiser Board. Each public member shall be appointed for the term prescribed for the other members of the board or commission and until the appointment of his successor. Vacancies shall be filled for the unexpired term only. The Governor may remove any such public member after hearing, for misconduct, incompetency, neglect of duty or for any other sufficient cause.

No public member appointed pursuant to this section shall have any association or relationship with the profession or a member thereof regulated by the board of which he is a member, where such association or relationship would prevent such public member from representing the interest of the public. Such a relationship includes a relationship with members of one's immediate family; and such association includes membership in the profession regulated by the board. To receive services rendered in a customary client relationship will not preclude a prospective public member from appointment. This paragraph shall not apply to individuals who are public members of boards on the effective date of this act.

It shall be the responsibility of the Attorney General to insure that no person with the aforementioned association or relationship or any other questionable or potential conflict of interest shall be appointed to serve as a public member of any board regulated by this section.

Where a board is required to examine the academic and professional credentials of an applicant for licensure or to test such applicant orally, no public member appointed pursuant to this section shall participate in such examination process; provided, however, that public members shall be given notice of and may be present at all such examination processes and deliberations concerning the results thereof, and, provided further, that public members may participate in the development and establishment of the procedures and criteria for such examination processes.

c. The Governor shall designate a department in the Executive Branch of the State Government which is closely related to the profession or occupation regulated by each of the boards or commissions designated in section 1 of P.L.1971, c. 60 (C. 45:1-2.1) and shall appoint the head of such department, or the holder of a designated office or position in such department, to serve without compensation at the pleasure of the Governor as a member of such board or commission.

d. A majority of the voting members of such boards or commissions shall constitute a quorum thereof and no action of any such board or commission shall be taken except upon the affirmative vote of a majority of the members of the entire board or commission.

L.1971, c. 60, § 2, eff. March 25, 1971. Amended by L.1977, c. 285, § 1, eff. Nov. 12, 1977; L.1981, c. 295, § 14, eff. Oct. 9, 1981; L.1984, c. 205, § 41; L.1991, c. 68, § 28, eff. March 21, 1991; L.1991, c. 134, § 16, eff. May 6, 1991.

Amended by L.1995, c. 366, § 21, eff. Jan. 5, 1996.

45:1-2.3. Qualifications; rights and duties

Such additional members:

- a. Need not meet the educational and professional requirements for membership on such boards or commissions as provided in the several statutes establishing such boards and commissions; and
- b. Shall be voting members subject to the same rights, obligations and duties as other members of their respective boards or commissions.

L.1971, c. 60, § 3, eff. March 25, 1971.

45:1-2.4. Effect of act on term of member in office

Nothing in this act shall affect the right of a board or commission member in office on the effective date of this act to continue to serve for the term for which he was appointed.

L.1971, c. 60, § 4, eff. March 25, 1971.

45:1-2.5. Compensation and reimbursement of expenses of members; executive secretaries; compensation and terms of employment; offices and meeting places

With respect to the boards or commissions designated in section 1 of P.L.1971, c. 60 (C.45:1-2.1), except as otherwise provided in subsection d. of this section, and notwithstanding the provisions of any other law:

- a. The officers and members shall be compensated on a per diem basis in the amount of \$25.00 or an amount to be determined by the Attorney General, with the approval of the State Treasurer, but not to exceed \$100.00 per diem or \$2,500.00 annually, and shall be reimbursed for actual expenses reasonably incurred in the performance of their official duties. Such moneys shall be paid according to rules and regulations promulgated by the Attorney General.
- b. The executive secretary shall receive such salary as shall be determined by the appointing authority within the limits of available appropriations and shall serve at its pleasure. Any such executive secretary who holds a certificate, license or registration issued by the board or commission by which he is employed shall not during such employment be permitted to engage in any profession or occupation regulated by the board or commission.
- c. The head of the department to which such board or commission is assigned shall maintain within any public building, whether owned or leased by the State, suitable quarters for the board's or commission's office and

meeting place, provided that no such office or meeting place shall be within premises owned or occupied by an officer or member of such board or commission.

d. The compensation schedule for members of boards and commissions provided in subsection a. of this section shall not apply to the members of the New Jersey Real Estate Commission, who shall be compensated pursuant to R.S.45:15-6 or to members of the State Board of Medical Examiners who shall receive compensation of \$150 per diem.

R.1977, c. 285, § 2. Amended by L.1981, c. 91, § 1, eff. March 31, 1981; L.1985, c. 137, § 2, eff. April 12, 1985; L.1989, c. 300, § 17, eff. Jan. 12, 1990.

45:1-2.6. Inapplicability of act to rights under civil service or any pension law or retirement system

Nothing in this act shall deprive any person of any tenure rights or of any right or protection provided him by Title 11 of the Revised Statutes, Civil Service,¹ or any pension law or retirement system.

L.1977, c. 285, § 3, eff. Nov. 12, 1977.

¹Now title 11A.

45:1-3. Expenses of boards paid from income; surplus paid to state treasurer; accounts

Each member of the boards mentioned in section 45:1-2¹ of this title shall be entitled to his actual traveling and other expenses incurred in the performance of his duties, which sum shall be paid from the license fees and other sources of income of such boards. Such boards shall also be entitled to expend from their income such sums as shall be necessary to defray all proper expenses incurred by them in the performance of their duties, including the compensation of any of their officers or agents whom they are authorized to compensate. Such boards, if authorized to collect an annual registration or license fee from persons licensed by them, may retain in their treasuries the fees so collected and use the same for the purpose of defraying the expenses of securing evidence against and prosecuting persons violating the provisions of the laws with the enforcement of which they are charged, or, in case the revenue of the boards from other sources shall be insufficient to pay the salary of their secretaries and their other expenses, such fees may be expended for such purposes. Such boards shall be entitled to retain, in addition to the above, at least one hundred dollars in their treasuries for the purpose of preparing and holding their examinations. On or before October thirty-first in each year such boards shall pay to the state treasurer all moneys remaining in their treasuries, except as above stated, which sum, when so paid, shall form a part of the state fund. Such boards shall keep accurate accounts of their receipts and expenditures, which accounts shall be subject to audit by the state comptroller.

¹Repealed; see, now, §§ 45:1-2.1, 45:1-2.2.

45:1-3.1. Application of act

The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of

Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, and the State Board of Social Work Examiners.

L.1974, c. 46, § 1, eff. June 24, 1974. Amended by L.1983, c. 7, § 20, eff. Jan. 18, 1983; L.1984, c. 205, § 42; L.1989, c. 153, § 23; L.1991, c. 31, § 17, eff. Aug. 20, 1991; L.1991, c. 68, § 29, eff. March 21, 1991; L.1991, c. 134, § 17, eff. May 6, 1991.

Amended by L.1995, c. 366, § 22, eff. Jan. 5, 1996.

45:1-3.2. Charges for examinations, licensures and other services; establishment or change by rule; standards

Notwithstanding the provisions of Title 45 of the Revised Statutes or any other law to the contrary, any board or commission named in section 1 of this supplementary act¹ may by rule establish, prescribe or change the charges for examinations, licensures and other services it performs, which rule shall first be approved by the head of the department to which such board or commission is assigned and shall be adopted in accordance with the provisions of the “Administrative Procedure Act,” P.L.1968, c. 410 (C. 52:14B-1).

Any board’s or commission’s charges established, prescribed or changed pursuant to this section shall be established, prescribed or changed to such extent as shall be necessary to defray all proper expenses incurred by the board or commission in the performance of its duties but such charges shall not be fixed at a level that will raise amounts in excess of the amount estimated to be so required.

L.1974, c. 46, § 2, eff. June 24, 1974.

¹N.J.S.A. § 45:1-3.1.

45:1-3.3. Administrative fees charged by boards; modification

The Director of the Division of Consumer Affairs may by rule establish, prescribe, or modify administrative fees charged by boards in accordance with the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.). For purposes of this section, “administrative fees” are charges assessed to licensees, registrants or holders of certificates, as the case may be, for board functions that are not unique to a particular board but are uniform throughout all boards. Administrative fees include, but are not limited to, fees for a duplicate or replacement license, certification or registration, late renewal fee, license reinstatement fee, and the fee for processing change of address.

L.1999, c. 403, § 4, eff. Jan. 18, 2000.

45:1-4. Salary of secretary

The secretary of each of the boards mentioned in section 45:1-2¹ of this title, whether or not a member thereof, shall be entitled to receive such reasonable salary or compensation for his services as secretary as shall be fixed by

such boards, which shall be paid by the boards from their receipts, unless an appropriation is made for the expenses of such boards, in which case the same shall be paid from such appropriation.

¹ Repealed. See, now, §§ 45:1-2.1, 45:1-2.2.

45:1-5, 45:1-6. Repealed by L.1979, c. 432, § 4, eff. Feb. 14, 1980

45:1-7. Professional or occupational licenses or certificates of registration; duration; expiration; exceptions; fees

Notwithstanding any of the provisions of Title 45 of the Revised Statutes or of any other law to the contrary, all professional or occupational licenses or certificates of registration, except such licenses or certificates issued to real estate brokers or salesmen pursuant to chapter 15 of Title 45, which prior to the effective date of this act were issued for periods not exceeding one year and were annually renewable, shall, on and after the effective date of this act, be issued for periods of two years and be biennially renewable, except that licenses and business permits issued to electrical contractors and certificates of registration issued to qualified journeymen electricians pursuant to chapter 5A of Title 45 shall be issued for periods of three years and be triennially renewable; provided, however, the boards or commissions in charge of the issuance or renewal of such licenses or certificates may, in order to stagger the expiration dates thereof, provide that those first issued or renewed after the effective date of this act, shall expire and become void on a date fixed by the respective boards or commissions, not sooner than six months nor later than 29 months, after the date of issue.

The fees for the respective licenses and certificates of registration issued pursuant to this act for periods of less or greater than one year shall be in amounts proportionately less or greater than the fees established by law.

L.1972, c. 108, § 1. Amended by L.1991, c. 6, § 1.

Amended by L.2001, c. 21, § 1.

45:1-7.1. Application to holders of professional or occupational licenses

a. Notwithstanding any other act or regulation to the contrary, the provisions of this section and sections 6 and 7 of P.L.1999, c. 403 (C.45:1-7.2 et al.) shall apply to every holder of a professional or occupational license or certificate of registration or certification issued or renewed by a board specified in section 2 of P.L. 1978, c. 73 (C.45:1-15), who seeks renewal of that license or certificate.

b. Every holder of a professional or occupational license or certificate of registration or certification, issued or renewed by a board specified in section 2 of P.L.1978, c. 73 (C.45:1-15), who seeks renewal shall submit a renewal application and pay a renewal fee prior to the date of expiration of the license or certificate of registration or certification. If the holder does not renew the license or certificate prior to its expiration date, the holder may renew it within 30 days of its expiration date by submitting a renewal application and paying a renewal fee and a late fee. Any professional or occupational license or certificate of registration or certification not renewed within 30 days of its expiration date shall be suspended without a hearing.

c. Any individual who continues to practice with an expired license or certificate of registration or certification after 30 days following its expiration date shall be deemed to be engaged in unlicensed practice of the regulated profession or occupation, even if no notice of suspension has been provided to the individual.

d. A professional or occupational license or certificate of registration or certification suspended pursuant to this section may be reinstated within five years following its date of expiration upon submission of a renewal application and payment of an additional reinstatement fee. An applicant seeking reinstatement of a license or certificate suspended pursuant to this section more than five years past its expiration date shall successfully complete the examination required for initial licensure, registration or certification and submit a renewal application and payment of an additional reinstatement fee.

e. A board specified in section 2 of P.L. 1978, c. 73 (C. 45:1-15) shall send a notice of renewal to each of its holders of a professional or occupational license or certificate of registration or certification, as applicable, at least 60 days prior to the expiration of the license or certificate. If the notice to renew is not sent at least 60 days prior to the expiration date, no monetary penalties or fines shall apply to the holder for failure to renew.

L.1999, c. 403, § 5, eff. Jan. 18, 2000.

45:1-7.2. Reinstatement

A board may reinstate the professional or occupational license or certificate of registration or certification of an applicant whose license or certificate has been suspended pursuant to section 5 of P.L.1999, c. 403 (C.45:1-7.1), provided that the applicant otherwise qualifies for licensure, registration or certification and submits the following upon application for reinstatement:

- a. Payment of all past delinquent renewal fees;
- b. Payment of a reinstatement fee;
- c. An affidavit of employment listing each job held during the period of suspended license, registration or certification which includes the names, addresses, and telephone numbers of each employer; and
- d. If applicable, satisfactory proof that the applicant has maintained proficiency by completing the continuing education hours or credits required for the renewal of an active license or certificate of registration or certification.

L.1999, c. 403, § 6, eff. Jan. 18, 2000.

45:1-7.3. Renewal applications

a. Renewal applications for all professional or occupational licenses or certificates of registration or certification shall provide the applicant with the option of either active or inactive renewal. A renewal applicant electing to renew as inactive shall not engage in professional or occupational practice within the State.

b. An applicant who selects the inactive renewal option shall remain on inactive status for the entire renewal period unless, upon application to the board, the board permits the inactive applicant to return to active status provided such applicant presents satisfactory proof that he has maintained proficiency by completing the continuing education hours or credits required for the renewal of an active license, registration or certification, if applicable.

L.1999, c. 403, § 7, eff. Jan. 18, 2000.

45:1-8. Contractors; application of § 45:1-9

The provisions of this act apply to the following classes of contractors:

- a. Tree experts, certified pursuant to P.L.1940, c. 100 (C. 13:1-28 et seq.¹);
- b. Home repair contractors, licensed pursuant to P.L.1960, c. 41 (C. 17:16C-62 et seq.);
- c. Electrical contractors, licensed pursuant to P.L.1962, c. 162 (C. 45:5A-1 et seq.);
- d. Master plumbers, licensed pursuant to P.L.1968, c. 362 (C. 45:14C-1 et seq.);
- e. Well drillers, licensed pursuant to P.L.1947, c. 377 (C. 58:4A-5 et seq.); and
- f. Any class of contractors who hereafter are licensed by the State.

L.1973, c. 254, § 1, eff. Nov. 26, 1973.

¹Renumbered C. 45:15C-1 to 45:15C-10.

45:1-9. Indication of license or certificate number on contracts, bids and advertisements

Any contractor licensed by the State shall indicate his license or certificate number on all contracts, subcontracts, bids and all forms of advertising as a contractor.

L.1973, c. 254, § 2, eff. Nov. 26, 1973.

45:1-10. Disclosure of laboratory payments on bills to patients and third party payors

It shall be unlawful for any person licensed in the State of New Jersey to practice medicine or surgery, dentistry, osteopathy, podiatry or chiropractic to agree with any clinical, bio-analytical or hospital laboratory, wheresoever located, to make payments to such laboratory for individual tests, combination of tests, or test series for patients unless such person discloses on the bills to patients and third party payors the name and address of such laboratory and the net amount or amounts paid or to be paid to such laboratory for individual tests, combination of tests or test series.

L.1973, c. 322, § 1, eff. Dec. 18, 1973. Amended by L.1977, c. 323, § 1, eff. Jan. 10, 1978.

45:1-10.1. Claims for third party payment; licensed health care professional; responsibility for filing

Effective 12 months after the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c. 154 (C.17B:30-23), a health care professional licensed pursuant to Title 45 of the Revised Statutes is responsible for filing all claims for third party payment, including claims filed on behalf of the licensed professional's patient for any health care service provided by the licensed professional that is eligible for third party payment, except that at the patient's option, the patient may file the claim for third party payment.

- a. In the case of a claim filed on behalf of the professional's patient, the professional shall file the claim within 60 days of the last date of service for a course of treatment, on the standard claim form adopted by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c. 154 (C.17B:30-23).

b. In the case of a claim in which the patient has assigned his benefits to the professional, the professional shall file the claim within 180 days of the last date of service for a course of treatment, on the standard claim form adopted by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c. 154 (C.17B:30-23). If the professional does not file the claim within 180 days of the last date of service for a course of treatment, the third party payer shall reserve the right to deny payment of the claim, in accordance with regulations established by the Commissioner of Banking and Insurance, and the professional shall be prohibited from seeking any payment directly from the patient.

(1) In establishing the standards for denial of payment, the Commissioner of Banking and Insurance shall consider the good faith use of information provided by the patient to the professional with respect to the identity of the patient's third party payer, delays in filing a claim related to coordination of benefits between third party payers and any other factors the commissioner deems appropriate, and, accordingly, shall define specific instances where the sanctions permitted pursuant to this subsection shall not apply.

(2) A professional who fails to file a claim within 180 days and whose claim for payment has been denied by the third party payer in accordance with this subsection may, in the discretion of a judge of the Superior Court, be permitted to refile the claim if the third party payer has not been substantially prejudiced thereby. Application to the court for permission to refile a claim shall be made within 14 days of notification of denial of payment and shall be made upon motion based upon affidavits showing sufficient reasons for the failure to file the claim with the third party payer within 180 days.

c. The provisions of this section shall not apply to any claims filed pursuant to P.L.1972, c. 70 (C.39:6A-1 et seq.).

d. A health care professional who violates the provisions of subsection a. of this section may be subject to a civil penalty of \$250 for each violation plus \$50 for each day after the 60th day that the provider fails to submit a claim. The penalty shall be sued for and collected by the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.

L.1999, c. 154, § 13, eff. July 1, 1999.

45:1-11. Violations; penalty

Any person violating this act shall be guilty of a misdemeanor.

L.1973, c. 322, § 2, eff. Dec. 18, 1973.

45:1-12. Podiatrist, optometrist or psychologist or professional service corporation; charge for completion of claim form for health insurance; fine; collection and enforcement

No podiatrist, optometrist or psychologist and no professional service corporation engaging in the practice of podiatry, optometry or psychology in this State shall charge a patient an extra fee for services rendered in completing a medical claim form in connection with a health insurance policy. Any person violating this act shall be subject to a fine of \$100.00 for each offense.

Such penalty shall be collected and enforced by summary proceedings pursuant to the Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.). The Superior Court and municipal court shall have jurisdiction within its territory of such

proceedings. Process shall be either in the nature of a summons or warrant and shall issue in the name of the State, upon the complaint of the State Board of Medical Examiners with respect to podiatrists, the New Jersey State Board of Optometry for optometrists or the State Board of Psychological Examiners for psychologists.

L.1975, c. 300, § 1, eff. Jan. 30, 1976. Amended by L.1991, c. 91, § 447, eff. April 9, 1991.

45:1-13. Repealed by L.1999, c. 403, á 12, eff. Jan. 18, 2000

45:1-14. Legislative findings and declarations; liberal construction of act

The Legislature finds and declares that effective implementation of consumer protection laws and the administration of laws pertaining to the professional and occupational boards located within the Division of Consumer Affairs require uniform investigative and enforcement powers and procedures and uniform standards for license revocation, suspension and other disciplinary proceedings by such boards. This act is deemed remedial, and the provisions hereof should be afforded a liberal construction.

L.1978, c. 73, § 1, eff. July 13, 1978.

45:1-15. Boards and professions or occupations regulated by or through such boards; application of act

The provisions of this act shall apply to the following boards and all professions or occupations regulated by, through or with the advice of those boards: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the State Board of Social Work Examiners, the State Board of Physical Therapy, the Professional Counselor Examiners Committee, the New Jersey Cemetery Board, the Orthotics and Prosthetics Board of Examiners, the Occupational Therapy Advisory Council, the Electrologists Advisory Committee, the Alcohol and Drug Counselor Committee, the Fire Alarm, Burglar Alarm, and Locksmith Advisory Committee, the Home Inspection Advisory Committee, the Massage, Bodywork and Somatic Therapy Examining Committee, and the Audiology and Speech-Language Pathology Advisory Committee.

L.1978, c. 73, § 2, eff. July 13, 1978. Amended by L.1983, c. 7, § 21, eff. Jan. 18, 1983; L.1984, c. 205, § 43; L.1989, c. 153, § 24; L.1991, c. 31, § 18, eff. Aug. 20, 1991; L.1991, c. 68, § 30, eff. March 21, 1991; L.1991, c. 134, § 14, eff. May 6, 1991.

Amended by L.1995, c. 366, § 23, eff. Jan. 5, 1996; L.1999, c. 403, § 1, eff. Jan. 18, 2000.

45:1-15.1. Rules and regulations

Consistent with their enabling acts, P.L.1978, c. 73 (C.45:1-14 et seq.) and the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.), the boards and others set forth in section 2 of P.L.1978, c. 73 (C.45:1-15) are authorized to adopt rules and regulations to serve the public health, safety and welfare.

L.1999, c. 403, 8, eff. Jan. 18, 2000.

45:1-16. Definitions

As used within this act the following words or terms shall have the indicated definition unless the context clearly indicates otherwise.

“Board” means any professional or occupational licensing board designated in section 2 of this act.¹

“Director” means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

“Person” means any natural person or his legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestuis que trust thereof.

L.1978, c. 73, § 3, eff. July 13, 1978.

¹N.J.S.A. § 45:1-15.

45:1-17. Powers of Attorney General to implement act and administer law enforcement activities of boards

In implementing the provisions of this act and administering the law enforcement activities of those professional and occupational boards located within the Division of Consumer Affairs, the Attorney General may:

a. After advice to the board or boards in question of his intent to proceed under this section, and the specific action he intends to take, and the failure of such board or boards to take steps in accordance with the advice of the Attorney General within 30 days of receipt of such advice, promulgate rules and regulations consistent with the provisions of this act and the Administrative Procedure Act, P.L.1968, c. 410 (C. 52:14B-1 et seq.) governing the procedure for administrative hearings before all boards within the Division of Consumer Affairs. Such rules and regulations shall govern administrative complaints, answers thereto, issuance of subpoenas, appointment of hearing examiners, adjournments, submission of proposed findings of fact and conclusions of law, the filing of briefs, and such other procedural aspects of administrative hearings before the boards as the Attorney General may deem necessary; provided, however, nothing herein authorized shall be construed to require the Attorney General to promulgate rules regarding prehearing investigative procedures.

b. After advice to the board or boards in question of his intent to proceed under this section, and the specific action he intends to take, and the failure of such board or boards to take steps in accordance with the advice of the Attorney General within 30 days of receipt of such advice, promulgate substantive rules and regulations consistent with the provisions of any statute governing the activities of any licensing agency, board or committee located within the Division of Consumer Affairs, which shall be limited to disciplinary matters and arbitrary restrictions on initial licensure. In addition to promulgating such rules and regulations, the Attorney General may direct that

any proposed or existing regulation be amended, abandoned or repealed. Prior to the final adoption of any regulation affecting the activities of any professional or occupational licensing agency, board or committee located within the division and prior to the issuance of any directive to amend, abandon or repeal any regulation, the Attorney General or his designee shall first consult with the agency, board or committee whose activities are affected regarding the proposed action.

c. After a full consideration of all relevant facts and the applicable law, may direct the initiation of any appropriate enforcement action by a professional or occupational licensing board or set aside, modify or amend, as may be necessary, any action or decision of a licensing agency, board or committee located within the Division of Consumer Affairs; provided, however, no such action shall be directed by the Attorney General in reviewing the action or decision of an agency, board or committee unless such action or decision is contrary to applicable law.

L.1978, c. 73, § 4, eff. July 13, 1978.

45:1-18. Investigative powers of boards, director or attorney general

Whenever it shall appear to any board, the director or the Attorney General that a person has engaged in, or is engaging in any act or practice declared unlawful by a statute or regulation administered by such board, or when the board, the director or the Attorney General shall deem it to be in the public interest to inquire whether any such violation may exist, the board or the director through the Attorney General, or the Attorney General acting independently, may exercise any of the following investigative powers:

a. Require any person to file on such form as may be prescribed, a statement or report in writing under oath, or otherwise, as to the facts and circumstances concerning the rendition of any service or conduct of any sale incidental to the discharge of any act or practice subject to an act or regulation administered by the board;

b. Examine under oath any person in connection with any act or practice subject to an act or regulation administered by the board;

c. Inspect any premises from which a practice or activity subject to an act or regulation administered by the board is conducted;

d. Examine any goods, ware or item used in the rendition of a practice or activity subject to an act or regulation administered by the board;

e. Examine any record, book, document, account or paper prepared or maintained by or for any professional or occupational licensee in the regular course of practicing such profession or engaging in such occupation or any individual engaging in practices subject to an act or regulation administered by the board. Nothing in this subsection shall require the notification or consent of the person to whom the record, book, account or paper pertains, unless otherwise required by law;

f. For the purpose of preserving evidence of an unlawful act or practice, pursuant to an order of the Superior Court, impound any record, book, document, account, paper, goods, ware, or item used, prepared or maintained by or for any board licensee in the regular course of practicing such profession or engaging in such occupation or any individual engaging in a practice or activity subject to an act or regulation administered by the board. In such cases as may be necessary, the Superior Court may, on application of the Attorney General, issue an order sealing items or material subject to this subsection; and

g. Require any board licensee, permit holder or registered or certified person to submit to an assessment of skills to determine whether the board licensee, permit holder or registered or certified person can continue to practice with reasonable skill and safety.

In order to accomplish the objectives of this act or any act or regulation administered by a board, the Attorney General may hold such investigative hearings as may be necessary and the board, director or Attorney General may issue subpoenas to compel the attendance of any person or the production of books, records or papers at any such hearing or inquiry.

L.1978, c. 73, § 5, eff. July 13, 1978.

Amended by L.2001, c. 307, § 1, eff. Jan. 3, 2002.

45:1-19. Failure or refusal to file statement or report, refusal of access to premises or failure to obey subpoena; penalty

If any person shall fail or refuse to file any statement or report or refuse access to premises from which a licensed profession or occupation is conducted in any lawfully conducted investigative matter or fail to obey a subpoena issued pursuant to this act, the Attorney General may apply to the Superior Court and obtain an order:

- a. Adjudging such person in contempt of court; or
- b. Granting such other relief as may be required; or
- c. Suspending the license of any such person unless and until compliance with the subpoena or investigative demand is effected.

L.1978, c. 73, § 6, eff. July 13, 1978.

45:1-20. Compelling testimony or production of book, paper or document; immunity from prosecution

If any person shall refuse to testify or produce any book, paper, or other document in any proceeding under this act for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, convict him of a crime, or subject him to a penalty or forfeiture, and shall, notwithstanding, be directed to testify or to produce such book, paper, or document by the Attorney General, he shall comply with such direction.

A person who is entitled by law to, and does assert such privilege, and who complies with such direction of the Attorney General shall not thereafter be prosecuted or subjected to any penalty or forfeiture in any criminal proceeding which arises out of and relates to the subject matter of the proceeding. No person so testifying shall be exempt from prosecution or punishment for perjury or false swearing committed by him in giving such testimony or from any civil or administrative action arising from such testimony.

L.1978, c. 73, § 7, eff. July 13, 1978.

45:1-21. Grounds for refusal to admit to examination or denial, suspension or revocation of any certificate, registration or license; definitions

A board may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license:

- a. Has obtained a certificate, registration, license or authorization to sit for an examination, as the case may be, through fraud, deception, or misrepresentation;
 - b. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
 - c. Has engaged in gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, safety or property of any person;
 - d. Has engaged in repeated acts of negligence, malpractice or incompetence;
 - e. Has engaged in professional or occupational misconduct as may be determined by the board;
 - f. Has been convicted of, or engaged in acts constituting, any crime or offense involving moral turpitude or relating adversely to the activity regulated by the board. For the purpose of this subsection a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;
 - g. Has had his authority to engage in the activity regulated by the board revoked or suspended by any other state, agency or authority for reasons consistent with this section;
 - h. Has violated or failed to comply with the provisions of any act or regulation administered by the board;
 - i. Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare;
 - j. Has repeatedly failed to submit completed applications, or parts of, or documentation submitted in conjunction with, such applications, required to be filed with the Department of Environmental Protection;
 - k. Has violated any provision of P.L.1983, c. 320 (C.17:33A-1 et seq.) or any insurance fraud prevention law or act of another jurisdiction or has been adjudicated, in civil or administrative proceedings, of a violation of P.L.1983, c. 320 (C.17:33A-1 et seq.) or has been subject to a final order, entered in civil or administrative proceedings, that imposed civil penalties under that act against the applicant or holder;
 - l. Is presently engaged in drug or alcohol use that is likely to impair the ability to practice the profession or occupation with reasonable skill and safety. For purposes of this subsection, the term "presently" means at this time or any time within the previous 365 days;
 - m. Has prescribed or dispensed controlled dangerous substances indiscriminately or without good cause, or where the applicant or holder knew or should have known that the substances were to be used for unauthorized consumption or distribution;
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n. Has permitted an unlicensed person or entity to perform an act for which a license or certificate of registration or certification is required by the board, or aided and abetted an unlicensed person or entity in performing such an act;

o. Advertised fraudulently in any manner.

For purposes of this act:

“Completed application” means the submission of all of the information designated on the checklist, adopted pursuant to section 1 of P.L.1991, c. 421 (C.13:1D-101), for the class or category of permit for which application is made.

“Permit” has the same meaning as defined in section 1 of P.L.1991, c. 421 (C.13:1D-101).

L.1978, c. 73, § 8, eff. July 13, 1978.

Amended by L.1991, c. 420, § 1, eff. May 16, 1992; L.1997, c. 151, § 10, eff. June 30, 1997; L.1999, c. 403, § 2, eff. Jan. 18, 2000.

45:1-21.1. Annual summary of compliance information and attendance at continuing education seminars; costs; information deemed public records

a. A board obtaining information from the Department of Environmental Protection pursuant to section 1 of P.L.1991, c. 418 (C. 13:1D-110) on the compliance of a member of a regulated profession with the requirements for completed applications of the department, shall annually develop a detailed written summary of the information gathered by the department pursuant to P.L.1991, c. 418 (C. 13:1D-110) regarding compliance with the department’s requirements for completed applications and attendance records for continuing education seminars required to be filed with the department pursuant to section 2 of P.L.1991, c. 419 (C. 13:1D-117).

b. Any reasonable costs incurred in preparation of the report required pursuant to this section may be included in the charges authorized pursuant to P.L.1974, c. 46 (C. 45:1-3.2).

c. Information required to be compiled by a board pursuant to this section, shall be deemed to be public records subject to the requirements of P.L.1963, c. 73 (C. 47:1A-1 et seq.).

L.1991, c. 420, § 2, eff. May 16, 1992.

45:1-21.2. Suspension of certain licenses; hearing

The director or a board shall suspend, as appropriate, after a hearing, the license, registration or certification of any person who has been certified by a lender or guarantor and reported to the director or the board, as the case may be, for nonpayment or default of a State or federal direct or guaranteed educational loan. The license, registration or certification shall not be reissued until the person provides the director or board with a written release issued by the lender or guarantor stating that the person has cured the default or is making payments on the loan in accordance with a repayment agreement approved by the lender or guarantor. If the person has continued to meet all other requirements for licensure, registration or certification during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director or the board may impose.

L.1999, c. 54, § 1.

45:1-22. Additional or alternative penalties to revocation, suspension or refusal to renew; temporary order suspending or limiting license; subpena

In addition or as an alternative, as the case may be, to revoking, suspending or refusing to renew any license, registration or certificate issued by it, a board may, after affording an opportunity to be heard:

a. Issue a letter of warning, reprimand, or censure with regard to any act, conduct or practice which in the judgment of the board upon consideration of all relevant facts and circumstances does not warrant the initiation of formal action;

b. Assess civil penalties in accordance with this act;

c. Order that any person violating any provision of an act or regulation administered by such board to cease and desist from future violations thereof or to take such affirmative corrective action as may be necessary with regard to any act or practice found unlawful by the board;

d. Order any person found to have violated any provision of an act or regulation administered by such board to restore to any person aggrieved by an unlawful act or practice, any moneys or property, real or personal, acquired by means of such act or practice; provided, however, no board shall order restoration in a dollar amount greater than those moneys received by a licensee or his agent or any other person violating the act or regulation administered by the board;

e. Order any person, as a condition for continued, reinstated or renewed licensure, to secure medical or such other professional treatment as may be necessary to properly discharge licensee functions;

f. Order any person, as a condition for continued, reinstated or renewed licensure, to submit to any medical or diagnostic testing and monitoring or psychological evaluation which may be required to evaluate whether continued practice may jeopardize the safety and welfare of the public;

g. Order any person, as a condition for continued, reinstated or renewed licensure, to submit to an assessment of skills to determine whether the licensee can continue to practice with reasonable skill and safety, and to take and successfully complete educational training determined by the board to be necessary;

h. Order any person, as a condition for continued, reinstated or renewed licensure, to submit to an assessment of skills to determine whether the licensee can continue to practice with reasonable skill and safety, and to submit to any supervision, monitoring or limitation on practice determined by the board to be necessary.

A board may, upon a duly verified application of the Attorney General that either provides proof of a conviction of a court of competent jurisdiction for a crime or offense involving moral turpitude or relating adversely to the regulated profession or occupation, or alleges an act or practice violating any provision of an act or regulation administered by such board, enter a temporary order suspending or limiting any license issued by the board pending plenary hearing on an administrative complaint; provided, however, no such temporary order shall be entered unless the application made to the board palpably demonstrates a clear and imminent danger to the public health, safety and welfare and notice of such application is given to the licensee affected by such order. If, upon review of

the Attorney General's application, the board determines that, although no palpable demonstration of a clear and imminent danger has been made, the licensee's continued unrestricted practice pending plenary hearing may pose a risk to the public health, safety and welfare, the board may order the licensee to submit to medical or diagnostic testing and monitoring, or psychological evaluation, or an assessment of skills to determine whether the licensee can continue to practice with reasonable skill and safety.

In any administrative proceeding commenced on a complaint alleging a violation of an act or regulation administered by a board, such board may issue subpoenas to compel the attendance of witnesses or the production of books, records, or documents at the hearing on the complaint.

L.1978, c. 73, § 9, eff. July 13, 1978.

Amended by L.1999, c. 403, § 3, eff. Jan. 18, 2000; L.2001, c. 307, § 2, eff. Jan. 3, 2002.

45:1-23. Summary proceeding in Superior Court; injunction; orders necessary to prevent unlawful practice or remedy past unlawful activity

Whenever it shall appear to a board, the director or the Attorney General that a violation of any act, including the unlicensed practice of the regulated profession or occupation, or regulation administered by such board has occurred, is occurring, or will occur, the Attorney General, in addition to any other proceeding authorized by law, may seek and obtain in a summary proceeding in the Superior Court an injunction prohibiting such act or practice. In any such proceeding the court may assess a civil penalty in accordance with the provisions of this act, order restoration to any person in interest of any moneys or property, real or personal, acquired by means of an unlawful act or practice and may enter such orders as may be necessary to prevent the performance of an unlawful practice in the future and to fully remedy any past unlawful activity. In any action brought pursuant to this section, the court shall not suspend or revoke any license issued by a board.

L.1978, c. 73, § 10, eff. July 13, 1978.

45:1-24. Failure to comply with order of board directing payment of penalties or restoration of moneys or property; enforcement

Upon the failure of any person to comply within 10 days after service of any order of a board directing payment of penalties or restoration of moneys or property, the Attorney General or the secretary of such board may issue a certificate to the Clerk of the Superior Court that such person is indebted to the State for the payment of such penalty and the moneys or property ordered restored. A copy of such certificate shall be served upon the person against whom the order was entered. Thereupon the clerk shall immediately enter upon his record of docketed judgments the name of the person so indebted and of the State, a designation of the statute under which the penalty is imposed, the amount of the penalty imposed, and amount of moneys ordered restored, a listing of property ordered restored, and the date of the certification. Such entry shall have the same force and effect as the entry of a docketed judgment in the Superior Court, and the Attorney General shall have all rights and remedies of a judgment creditor in addition to exercising any other available remedies. Such entry, however, shall be without prejudice to the right of appeal to the Appellate Division of the Superior Court from the board's order.

An action to enforce the provisions of any order entered by a board or to collect any penalty levied thereby may be brought in any municipal court or the Superior Court in summary manner pursuant to the Penalty Enforcement Act, (N.J.S. 2A:58-1 et seq.) and the rules of court governing the collection of civil penalties. Process in such

action shall be by summons or warrant, and in the event that the defendant fails to answer such action, the court shall issue a warrant for the defendant's arrest for the purpose of bringing such person before the court to satisfy any order entered.

L.1978, c. 73, § 11, eff. July 13, 1978. Amended by L.1991, c. 91, § 448, eff. April 9, 1991.

45:1-25. Violations; civil penalty; action to collect or enforce

a. Any person who engages in any conduct in violation of any provision of an act or regulation administered by a board shall, in addition to any other sanctions provided herein, be liable to a civil penalty of not more than \$10,000 for the first violation and not more than \$20,000 for the second and each subsequent violation. For the purpose of construing this section, each act in violation of any provision of an act or regulation administered by a board shall constitute a separate violation and shall be deemed a second or subsequent violation under the following circumstances:

- (1) an administrative or court order has been entered in a prior, separate and independent proceeding;
- (2) the person is found within a single proceeding to have committed more than one violation of any provision of an act or regulation administered by a board; or
- (3) the person is found within a single proceeding to have committed separate violations of any provision of more than one act or regulation administered by a board.

b. In lieu of an administrative proceeding or an action in the Superior Court, the Attorney General may bring an action in the name of any board for the collection or enforcement of civil penalties for the violation of any provision of an act or regulation administered by such board. Such action may be brought in summary manner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (C.2A:58-10 et seq.) and the rules of court governing actions for the collection of civil penalties in the municipal court where the offense occurred. Process in such action may be by summons or warrant and in the event that the defendant in such action fails to answer such action, the court shall, upon finding an unlawful act or practice to have been committed by the defendant, issue a warrant for the defendant's arrest in order to bring such person before the court to satisfy the civil penalties imposed. In any action commenced pursuant to this section, the court may order restored to any person in interest any moneys or property acquired by means of an unlawful act or practice.

c. Any action alleging the unlicensed practice of a profession or occupation shall be brought pursuant to this section or, where injunctive relief is sought, by an action commenced in the Superior Court.

d. In any action brought pursuant to this act, a board or the court may order the payment of costs for the use of the State, including, but not limited to, costs of investigation, expert witness fees and costs, attorney fees and costs, and transcript costs.

L.1978, c. 73, § 12, eff. July 13, 1978. Amended by L.1991, c. 91, § 449, eff. April 9, 1991.

Amended by L.1999, c. 403, § 9, eff. Jan. 18, 2000; L.2001, c. 307, § 3, eff. Jan. 3, 2002.

45:1-26. Repeal of inconsistent acts and parts of acts

All acts and parts of acts inconsistent with this act are hereby superseded and repealed.

R.1978, c. 73, § 13, eff. July 13, 1978.

45:1-27. Severability

If any provision of this law or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the law which can be given effect without the invalid provision or application, and to this end the provisions of this law are severable.

L.1978, c. 73, § 14, eff. July 13, 1978.

CHAPTER 12 OPTOMETRY

45:12-1. Optometry declared a profession; definition

Optometry is hereby declared to be a profession, and the practice of optometry is defined to be the employment of objective or subjective means, or both, for the examination of the human eye for the purposes of ascertaining any departure from the normal, measuring its powers of vision and adapting lenses or prisms for the aid thereof, or the use and prescription of pharmaceutical agents, excluding controlled dangerous substances as provided in sections 5, 6, 7 and 8 of P.L.1970, c. 226 (C. 24:21-5 through C. 24:21-8) and section 4 of P.L.1971, c. 3 (C. 24:21-8.1) and excluding those prescription medications taken orally or by injection, except for injections to counter anaphylactic reaction, for the purposes of treating deficiencies, deformities, diseases, or anomalies of the human eye including the removal of superficial foreign bodies from the eye and adnexae. An optometrist utilizing pharmaceutical agents for treatment purposes shall be held to a standard of patient care in the use of such agents commensurate to that of a physician utilizing ocular pharmaceutical agents for treatment purposes. A person shall be deemed to be practicing optometry within the meaning of this chapter who in any way advertises himself as an optometrist, or who shall employ any means for the measurement of the powers of vision or the adaptation of lenses or prisms for the aid thereof, practice, offer or attempt to practice optometry as herein defined, either on his own behalf or as an employee or student of another, whether under the personal supervision of his employer or perceptor or not, or to use testing appliances for the purposes of measurement of the powers of vision or diagnose any ocular deficiency or deformity, visual or muscular anomaly of the human eye or prescribe lenses, prisms or ocular exercise for the correction or the relief thereof, or who uses or prescribes pharmaceutical agents for the purposes of diagnosing and treating deficiencies, deformities, diseases or anomalies of the human eye or who holds himself out as qualified to practice optometry.

Amended by L.1948, c. 350, § 1, eff. Sept. 1, 1948; L.1954, c. 227, § 1, eff. March 1, 1955; L.1991, c. 385, § 2, eff. July 14, 1992.

45:12-2. New Jersey state board of optometrists; membership; appointments; terms of office

The New Jersey State Board of Optometrists, hereinafter in this chapter designated as the “board,” created and established by the act entitled “An act to regulate the practice of optometry, to license optometrists, and to punish persons violating the provisions thereof,” approved April seventeenth, one thousand nine hundred and fourteen (L.1914, c. 222, p. 448), as amended and supplemented,¹ is continued. The board shall consist of five members, each of whom shall possess sufficient knowledge of theoretical and practical optics to practice optometry, and shall have been a resident of this State engaged in the practice of optometry for at least five years. Upon the expiration of the term of office of a member, his successor shall be appointed by the Governor, subject to the provisions of section 45:1-2 of this Title, for a term of three years from July first of the year of appointment. Each member shall hold his office until his successor has qualified. Any vacancy in the membership of the board shall be filled for the unexpired term in the manner provided for an original appointment.

Amended by L.1938, c. 277, p. 603, § 7, eff. May 25, 1938.

¹ N.J.S.A. § 45:12-1 et seq.

45:12-3. Oath of office; officers; secretary-treasurer's compensation and bond; appointment and powers of agent

The members of the board shall, before entering upon the discharge of their duties, and within 30 days after their appointment, take and subscribe an oath before an officer authorized to administer oaths in this State, for the faithful performance of their duties, and file the same with the Secretary of State. They shall annually elect from their number a president, and shall also annually elect a secretary-treasurer, who may or may not be a member of the board, each of which officers shall hold office for 1 year and until his successor shall have been duly elected and qualified. The secretary-treasurer shall receive such compensation for his services as may be determined by the board, and shall give a bond for the faithful performance of his duties, in such sum as it may determine. The board may also appoint an agent, whose title shall be inspector of the New Jersey State Board of Optometrists, who shall hold office during the pleasure of the board, and shall, during his continuance in his office, be authorized to serve and execute any process issued by any court of record under the provisions of this chapter. The agent shall also have the power to enter any optometrist's office or place where the practice of optometry is carried on for the purpose of inspecting the premises and the license and registration of the optometrists therein. The appointment of the agent shall not be subject to the provisions of the civil service law.

Amended by L.1954, c. 227, p. 846, § 2, eff. March 1, 1955.

45:12-4. Rules and regulations; seal; records; semiannual examinations

The board shall conduct an investigation and ascertain the facts relating to the practice of optometry for the purpose of determining the need for, and the desirability of, rules to promote the safety, protection and welfare of the public and to effectuate the purposes of this chapter and to aid the board in the performance of its powers and duties hereunder, and the board shall thereupon make and promulgate rules and regulations for the said purposes. Any member thereof may, upon being duly designated by the board, or a majority thereof, administer oaths or take testimony concerning any matter within the jurisdiction of the board. The board shall adopt a seal, of which the secretary shall have the care and custody, and all courts of this State shall take judicial notice of said seal. Said secretary shall keep a record of all the proceedings of the board, which shall be open to public examination. The board shall hold, at least twice in each year, an examination of applicants for registration to practice optometry if there shall be such applicants.

Amended by L.1952, c. 255, p. 869, § 1, eff. May 21, 1952.

45:12-5. Applications for certificate of registrations; qualifications of applicants; examination; issuance of certificate

A person desiring to commence the practice of optometry shall file with the secretary of the board, upon blanks to be furnished by the secretary, an application, verified by oath of the applicant, stating therein that he is more than 21 years of age, of good moral character, is a citizen of the United States, or has declared his intention to become such a citizen, has a preliminary education equivalent to a course of at least 4 years in an approved public or private high school and has been graduated from a school or college of optometry maintaining a standard satisfactory to the board and which was in good standing in the opinion of the board at the date of graduation, and shall have received a diploma conferring upon him the degree of doctor of optometry or what in the opinion of the board may be considered the equivalent thereof, and shall have taken an examination before the board to determine his qualifications therefor. If the examination of any applicant for registration shall be satisfactory to the majority of the board, he shall receive from it a certificate of registration authorizing him to practice optometry. All examination papers of applicants shall be deposited in the New Jersey State Library, and remain there for a period of 1 year, at

the expiration of which time they shall be destroyed, and they shall be prima facie evidence of all matters therein contained.

Amended by L.1952, c. 255, p. 870, § 2, eff. May 21, 1952; L.1965, c. 209, § 1, eff. Dec. 23, 1965.

45:12-6. Fees; numbering and recording of certificates; filing of photograph of registrant

The fee for such examination shall be twenty-five dollars (\$25.00), and for a certificate of registration, fifteen dollars (\$15.00), to be paid to the secretary of the board by the applicant upon filing his application and receiving his certificate, respectively. Before any certificate is issued it shall be numbered and recorded in a book kept in the office of the board, and its numbers shall be noted upon the certificate. A photograph of the person registered shall be filed with the record. In all legal proceedings the record and photograph so kept in the office of the board, or certified copies thereof, shall be prima facie evidence of the facts therein stated.

Amended by L.1949, c. 170, p. 559, § 1, eff. May 19, 1949.

45:12-7. Issuance of license to licensees of other states; fee

Any applicant for license to practice optometry, upon proving to the satisfaction of the board that he is of good moral character, a citizen of the United States, or has declared his intention to become such a citizen, and that he has been examined and licensed by the examining and licensing board of another State of the United States, and that at the time of the granting of such license the standard of requirements for the license to practice optometry in the State where such license was granted was at least substantially equal to the standard of requirements for such license established by this chapter, or upon proof that he has successfully passed an examination conducted by the International Association of Boards of Examiners in Optometry, and upon filing with the secretary of the board a copy of his license or certificate, verified as a true copy by the affidavit of the secretary of the board granting such license, may, in the discretion of the board, be granted a license to practice optometry without further examination upon the payment to the treasurer of the board of a license fee of fifty dollars (\$50.00), and in such application for a license without examination all questions of academic requirements of other States shall be determined by the Commissioner of Education of this State.

Amended by L.1952, c. 255, p. 870, § 3, eff. May 21, 1952.

45:12-8. Certificate displayed in office; practitioners' names displayed outside; practice outside office; change of location

Every person practicing optometry shall display his registration certificate or certificates, together with his registration renewal certificate or certificates, in a conspicuous place in the office or offices wherein he practices optometry, but not in such manner that they may be seen from the outside of such office or offices, and, whenever required, exhibit the registration and renewal certificates to the board or its authorized representatives. Every office where an optometrist is practicing shall have displayed on a sign so as to be read on the outside of the office the name of each optometrist practicing therein. When practicing the profession of optometry outside of or away from the office he shall deliver to each patient a bill for professional services rendered, which shall contain his full name, home post-office address and the address of his principal office in this State, the number of his certificates, and his signature.

Every person practicing optometry in New Jersey shall notify the board in writing of any change of address or location of his office or offices at least 5 days prior to occupying said new office, returning therewith the appropriate registration renewal certificate or certificates and the board shall issue a new registration renewal certificate or certificates for the new office location or locations.

Amended by L.1948, c. 350, p. 1402, § 2, eff. Oct. 1, 1948; L.1954, c. 227, p. 846, § 3, eff. March 1, 1955.

45:12-9. Registration renewal fee; nonactive renewal certificate; obtaining active certificate of registration after 5 years; branch office registration certificates; revocation

Every registered optometrist who practices in the State of New Jersey shall, on such dates and times as the board may determine, pay to the secretary-treasurer of the board a registration renewal fee for which he shall receive a renewal of his registration.

A nonactive registration renewal certificate shall be issued to those not practicing within the State upon payment of a renewal fee, payable to the secretary-treasurer of the board on such dates and times as the board may determine. Should a nonactive registrant desire to practice in New Jersey during the registration year, he shall notify the board in writing of his office location, shall pay the required fee for a change of address and an additional fee to activate his license. He must return his nonactive registration renewal certificate for cancellation. The board shall thereupon issue an active registration certificate to said registrant for his office location.

Every person having an active or nonactive license to practice optometry in New Jersey shall notify the board in writing of any change of address and pay a fee and return therewith his registration renewal certificate and the board shall issue a new registration renewal certificate.

Every registered optometrist having a nonactive registration renewal certificate for a period of 5 years or more who desires an active registration certificate shall be required to submit to a practical examination, conducted by the board, and if the results of the examination are satisfactory to the majority of the board, he shall then be issued an active certificate of registration authorizing him to practice in this State.

The board shall have the power to issue, upon proper application and payment of the prescribed fees, branch office registration certificates to active licensees when, in its discretion, and after a proper investigation, it determines that the new branch office complies with the provisions of this chapter and the rules and regulations of the board and that such action serves the public interest.

Every licensee holding an active registration renewal certificate who intends to practice at any place other than the address for which his active registration renewal certificate is issued shall be required to obtain from the secretary-treasurer for a fee a branch office registration certificate for each and every location wherein he practices; provided, that nothing herein contained shall be construed to require an active licensee to obtain a branch office certificate for the purpose of serving on the staff of a hospital or other health care facility licensed by the Department of Health or institution; and further provided, that nothing herein contained shall be construed to require an active licensee to obtain a branch office certificate for the purpose of rendering necessary optometric services to patients confined to their homes, hospitals or other health care facilities licensed by the Department of Health or institutions.

Every licensee holding a branch office registration certificate or certificates shall, on such dates and times as the board may determine, pay to the secretary-treasurer a registration renewal fee for each branch office registration certificate he holds, for which he shall receive a branch office registration renewal certificate or certificates.

In case of default in payment of registration renewal fees by any registered optometrist, his certificate or certificates to practice may be revoked by the board upon 20 days' notice to the last registered address of said optometrist of the time and place of considering such revocation; but the certificate or certificates shall not be revoked if the person in default pays such fees before or at such time of consideration named by the board.

Branch office registration certificates and branch office registration renewal certificates shall be displayed in the offices for which they are issued as provided for in R.S. 45:12-8.

45:12-9.1. Public policy

It is hereby declared in the interest of the citizens of this State, to encourage the maintenance of continuing proficiency for registered active optometrists to the end that the utilization and application of new techniques, scientific and clinical advances and the achievement of research will be in the public interest.

45:12-9.2. Continuing educational programs

All registered active optometrists now or hereafter licensed in the State of New Jersey shall be required to take courses of study relating to the practice of the profession of optometry or to maintain proficiency in some other alternative manner to be prescribed and established by the New Jersey State Board of Optometrists; except that any practitioner who has been granted his license by examination during the preceding year shall be exempt from this requirement for the succeeding year. The board shall approve only such continuing educational programs as are available to all persons practicing optometry in the State on a reasonable nondiscriminatory basis. The board may approve programs to be held within or without the State of New Jersey. The board shall approve such programs that enable optometrists in all sections of the State to attend such programs. In no event shall the board approve a program offered by any professional association that discriminates against any licensed optometrists in the State, except that the board shall permit a professional association to impose a differential in registration fees not to exceed 130% of the fee charged to members of that professional association.

45:12-9.3. Credits necessary

Fifty credits of continuing professional optometric education shall be required biennially of each New Jersey optometrist holding an active license during the period preceding the established license renewal date. Each credit shall represent or be equivalent to one hour of actual course attendance or in the case of those electing an alternative method of satisfying the requirements of this act shall be approved by the board and certified to the board on forms to be provided for that purpose.

45:12-9.4. Reactivation of license; credits necessary

In order to reactivate a license which has been inactive, the applicant shall give evidence satisfactory to the board of having maintained proficiency by attaining credits in an amount at least equal to that required for the renewal of an active licensee applicant at that time.

45:12-9.5. Waiver of requirements

The board may waive any of the requirements of this act in cases of certified illness or undue hardship to be determined on an individual basis.

45:12-9.6. Acceptance of federal funds

The board is authorized to treat funds allocated for the purpose of continuing proficiency as State Funds for the purpose of accepting any funds made available under Federal Law for the promulgation and maintenance of programs of continuing proficiency.

45:12-9.7. Inapplicability of act to practice of medicine and surgery

Nothing in this act shall be construed to permit the practice of medicine and surgery as defined in R.S. 45:9-5.1.

45:12-9.8. Certification of optometrists for use and prescription of pharmaceutical agents; application form; procedure; fees

The New Jersey State Board of Optometrists shall prescribe the application form, procedure and fees for certification for the use and prescription of pharmaceutical agents for treatment purposes in the practice of optometry and promulgate the rules and regulations necessary to effectuate the purposes of this amendatory and supplementary act.

45:12-9.9. Testing requirements for certification; educational standards

The New Jersey State Board of Optometrists shall establish the testing requirements which shall be fulfilled before a person may be certified to use or prescribe pharmaceutical agents for treatment purposes in the practice of optometry. In addition, the board shall establish continuing education requirements for the renewal of certification for the use and prescription of pharmaceutical agents for treatment purposes in the practice of optometry. No licensee shall be tested by the board for certification to use or prescribe pharmaceutical agents for treatment purposes in the practice of optometry before having first satisfactorily completed all educational requirements in ocular pharmacology at a school duly accredited by the United States Department of Education and the Council on Postsecondary Accreditation. These educational standards shall be no less than that required of currently enrolled students as part of their requirements for graduation from that school. This certification process shall be required of all persons seeking to utilize pharmaceutical agents for treatment purposes in the practice of optometry regardless of licensure either prior or subsequent to the effective date of this amendatory and supplementary act.

45:12-9.10. Examination in ocular pharmacology; interim advisory panel; members

No licensee shall be certified by the New Jersey State Board of Optometrists to use or prescribe pharmaceutical agents for treatment purposes in the practice of optometry before having received a satisfactory score on an examination in ocular pharmacology approved and administered by the board. Until such time as a majority of the optometrist board members are certified to use and prescribe pharmaceutical agents for treatment purposes in the practice of optometry, an interim three member panel of experts in ocular pharmacology shall be established to prepare or endorse an examination for board approval. The interim advisory panel of experts in ocular pharmacology shall be comprised of a physician selected by the State Board of Medical Examiners, a doctor of pharmacology selected by the Board of Pharmacy, and a representative of a school of optometry duly accredited by the United

States Department of Education and the Council on Postsecondary Accreditation, to be selected by the New Jersey State Board of Optometrists. The interim panel shall be selected by the respective boards within 90 days of the effective date of this amendatory and supplementary act. Panel members shall be directly responsible to the Director of the Division of Consumer Affairs, who may order the replacement of any panel member for failure to promptly and equitably fulfill their duties. The panel shall have 120 days following appointment of a majority of the panel to submit to the New Jersey State Board of Optometrists an examination in ocular pharmacology. Should the panel fail within the 120 day period to submit an examination to the New Jersey State Board of Optometrists, the Director of the Division of Consumer Affairs shall designate, within 90 days thereafter, the examination for the interim period. Should the Director of the Division of Consumer Affairs fail to designate an examination within the 90 day period, the test shall be designated by the New Jersey State Board of Optometrists.

45:12-9.11. Requirements or duties with respect to prescription, administration or dispensing of drug by optometrist; 72-hour supply limitation

Whenever in any law there is a requirement or duty with respect to the prescription, administration or dispensing of any drug which applies to any person authorized to prescribe that drug, the same shall apply to an optometrist when prescribing, administering or dispensing a pharmaceutical agent pursuant to R.S. 45:12-1, except that an optometrist shall not dispense a prescription as provided for in R.S. 45:12-1 in an amount exceeding a 72-hour supply of that prescription unless the prescription is dispensed at no charge to the patient.

5:12-9.12. Practice of optometry at retail store or office permitted if identified as independent doctor; outside control or interference with practice prohibited

Notwithstanding any other provision of law to the contrary, an optometrist shall not be prohibited from practicing optometry at a rented location in a retail or commercial store or office or ophthalmic dispenser's office, provided the optometrist is identified as an independent doctor of optometry; and, provided further, that the landlord or any officer, employee or agent of the landlord or any other person who does not possess a valid certificate of registration as an optometrist or physician in this State shall not directly or indirectly control, influence, interfere with or supervise the professional judgment of the optometrist in the practice of optometry, including but not limited to, the level or type of care or services rendered or the professional fees charged therefor, except as otherwise provided by P.L.1969, c. 232 (C. 14A:17-1 et seq.).

45:12-10. Certification of records of boards as to issuance of licenses; fees; certificate as evidence

The secretary of the board, upon request, shall certify over the seal of the board whether the records kept by it show or fail to show the issuance of a license to practice optometry or any branch thereof or any other profession or business, the practice of which is licensed by the board, or the issuance of any annual certificate of registration for such practice. The fee for such certificate shall be \$3.00. Any such certificate, whether made on such request or made by said secretary for use in proceedings in which the board may be a party, shall be prima facie evidence of the facts therein stated.

45:12-11. Repealed by L.1999, c. 403, § 12, eff. Jan. 18, 2000

45:12-12 to 45:12-14. Repealed by L.1979, c. 432, §§ 1, 6, eff. Feb. 14, 1980

45:12-15. Issuance of new certificate after revocation

Where the certificate of registration of any person has been revoked the board may, after the expiration of one year, entertain an application for a new certificate in like manner as original applications for certificates are entertained, and, upon such new application it may, in its discretion, exempt the applicant from the necessity of undergoing an examination.

45:12-16. Optometrists convicted of crime reported to state board

The clerk of every court wherein a person licensed to practice optometry in this state shall be convicted of a crime shall make a report thereof in writing to the board of the conviction. The report shall state the name and address of the person convicted and the name of the court and the judge presiding therein at the time of the conviction, the date thereof, the nature of the crime of which the person was convicted and the sentence imposed by the court.

45:12-17. Expenses of board and its members

The board may cause to be paid out of the registration fees, penalties, and other fees received by it, all proper expenses incurred by it under the provisions of this chapter, including the salary of its secretary-treasurer and compensation for clerical assistance, inspectors and agents, as shall be determined by the board from time to time, but in no case shall any such expenses be paid by or be a charge against the state. The members of the board shall be entitled to reimbursement for their traveling and hotel expenses, incurred in pursuance of their duties.

45:12-17.1. Allowance to members of Board; reimbursement for expenses

Each member of the New Jersey State Board of Optometrists shall receive the sum of two hundred fifty dollars (\$250.00) for each examination held pursuant to section 45:12-4 of the Revised Statutes and shall be entitled to reimbursement for all proper expenses incurred in pursuance of his duties.

45:12-18. Account and report of receipts and expenditures

An itemized account of all the receipts and expenditures of the board shall be kept by the secretary-treasurer, and a detailed report thereof each year, ending with June thirtieth, duly verified by the affidavit of said secretary-treasurer, shall be filed with the State Comptroller within ten days thereafter. Nothing in this section or section 45:12-17 of this Title shall be construed as modifying in any respect the provisions of sections 45:1-3 and 45:1-4 of this Title.

45:12-18.1. Record of examination of patient considered exclusive property of optometrist

The record of an optometrist of the examination of a patient, including patient's name, address, age, occupation, and all findings and pertinent facts concerning the patient discovered and disclosed during the course of such examination, as well as the record of professional services rendered and the fees charged therefor shall, because of the confidential nature in the relationship, be the exclusive property of the optometrist who rendered the professional services to the patient. Any unauthorized use by any other person, firm or corporation of the information contained therein shall constitute an infringement of the property rights of the patient and the optometrist, and shall subject the offender to a civil suit for damages by the person aggrieved.

45:12-18.2. Partial invalidity

In the event that any section, paragraph, clause, sentence or part of this act shall for any reason be adjudged to be invalid by any court of competent jurisdiction, such judgment shall not impair the remainder thereof, but shall be confined strictly in its operation to the particular clause, section, paragraph or part thereof so held to be invalid.

45:12-19. Illegal practices; peddling eyeglasses; attending confined person

No person, not a holder of a certificate of registration duly issued to him, shall practice optometry within the State, and no person shall falsely personate a registered optometrist of a like or different name, nor buy, sell or fraudulently obtain a certificate issued to another. No person shall directly or indirectly for himself or others do or engage in any acts or practices specifically prohibited to duly registered optometrists by the provisions of section 45:12-11 of this chapter.

No person shall peddle spectacles, eyeglasses or lenses or practice optometry from house to house or on the streets or highways notwithstanding any law providing for the licensing of peddlers. This shall not prohibit, however, an optometrist from attending, prescribing, and furnishing spectacles, eyeglasses or lenses to a person who by reason of an illness, or physical or mental infirmity is confined to his place of abode, or to a hospital or other institution.

45:12-19.1. Practicing under another's name; employment by others

It shall be unlawful for any person licensed to practice optometry under the laws of the State of New Jersey to advertise, practice or hold himself forth as being entitled to practice under a name other than his own, unless he be an associate of or an assistant to an optometrist licensed under the laws of the State of New Jersey, and it shall be unlawful for any unlicensed person, or any association or corporation directly or indirectly to engage or undertake to engage in the practice of optometry by utilizing the services, upon a salary, commission basis, or by any other means or method, of any person licensed to practice optometry in the State of New Jersey. It shall be unlawful for any optometrist to engage or undertake to engage in the practice of optometry in behalf of any unlicensed person, association or corporation, except that this shall not prohibit the employment by or the formation of partnerships between optometrists or physicians duly licensed in the State of New Jersey.

45:12-19.2. Cards offering special rates or discounts

It shall be unlawful for any person, association or corporation to issue cards offering free eye examinations or eye examinations for any price, or eye examinations at a discount or offering special rates or discounts for eyeglasses.

45:12-19.3. Effective date

This act shall take effect March 1, 1955.

45:12-20, 45:12-21. Repealed by L.1979, c. 432, § 1, eff. Feb. 14, 1980

45:12-22 to 45:12-25. Repealed by L.1953, c. 43, §§ 65 to 68, eff. Mar. 19, 1953

45:12-26. Titles not authorized

Nothing contained in this chapter shall confer upon any person practicing optometry the right to add, affix, or attach to his name the title, designation, character or letters of M.D., surgeon, doctor, unless qualified by the word optometrist, ophthalmologist, or to indicate in any way that he is engaged in the treatment of injuries of the human eye, or to use any therapeutic measures or agencies other than those included in the practice of optometry as defined in section 45:12-1 of this chapter for the treatment of the human eye, unless he is authorized to do so by the board, body or persons empowered by law to award such right or title.

45:12-27. Testimony and reports of licensed optometrist; receipt as qualified evidence; right to free choice of ocular practitioner

The testimony and reports of an optometrist licensed to practice in this State shall be received by any State, county, municipal, school district or other public board, body, agency, institution or official and by any private educational or other institution receiving public funds as qualified evidence with respect to any matter within the scope of the practice of optometry as defined in Revised Statutes 45:12-1; and no such board, body, agency, official or institution shall, in retaining and utilizing the professional services of ocular practitioners or in any other manner, discriminate between licensed practitioners of optometry and other ocular practitioners or interfere with any individual's right to free choice of ocular practitioner.

CHAPTER 17B. DEPARTMENT OF LAW AND PUBLIC SAFETY

CONTACT LENS DISPENSING

52:17B-41.25. Short title

This act shall be known and may be cited as the “Contact Lens Dispenser Act.”

L.1991, c. 447, § 1, eff. April 17, 1992.

52:17B-41.26. Definitions

As used in this act:

a. “Practice of contact lens dispensing” means the sale or delivery of contact lenses to the patient based upon the prescription of powers for vision and specifications for contact lenses for the patient as provided by a licensed physician or optometrist. The practice includes, but is not limited to, the analysis and interpretation of prescriptions and specifications for contact lenses; the preparation of orders and the grinding for fabrication of contact lenses; the instruction of the patient as to the proper insertion, removal, care and the use of the contact lenses; and the duplication, reproduction and replacement of previously prepared contact lenses.

b. “Prescription” means written instructions or orders from a licensed physician or optometrist stating the powers of vision of a person.

c. “Duplication” means the replacement or reproduction of contact lenses based upon a prescription or specifications of record.

L.1991, c. 447, 2, eff. April 17, 1992.

52:17B-41.27. Authorized dispensers

Any ophthalmic dispenser licensed in New Jersey may engage in the practice of contact lens dispensing.

L.1991, c. 447, § 3, eff. April 17, 1992.

52:17B-41.28. Written prescription required

A contact lens dispenser shall only dispense contact lenses upon a written prescription provided by a licensed physician or optometrist containing the powers of vision and specifications for contact lenses for the patient.

L.1991, c. 447, § 4, eff. April 17, 1992.

52:17B-41.29. Replacement, reproduction or duplication of previously dispensed contact lenses

Previously dispensed contact lenses shall only be replaced, reproduced, or duplicated upon the prescription or specifications of record, a copy of which shall be provided by the original contact lens prescriber or dispenser upon the patient's request; provided that the prescription or specifications of record are not more than two years old.

L.1991, c. 447, § 5, eff. April 17, 1992.

52:17B-41.30. Release of copy of patient's prescription to dispenser upon request of patient; exception

A licensed physician or optometrist shall release a copy of the patient's prescription containing a spectacle lens specification with contact lens specifications to any person qualified to dispense contact lenses upon the patient's request, except that nothing in this act shall require an optometrist or physician to write a prescription for contact lenses when, in the judgment of the optometrist or physician, it is contraindicated.

L.1991, c. 447, § 6, eff. April 17, 1992.

52:17B-41.31. Release of complete record of contact lens specifications upon request

Notwithstanding any rule or regulation to the contrary, the complete record of contact lens specifications shall be released by an optometrist or ophthalmologist to the patient or to another ophthalmologist, optometrist or ophthalmic dispenser licensed in the State of New Jersey upon either the oral or written request of the patient or professional acting on the patient's behalf.

L.1991, c. 447, § 7, eff. April 17, 1992.

CHAPTER 38
NEW JERSEY STATE BOARD OF OPTOMETRISTS

13:38-1.1 Optometrist presumed responsible for advertisements

Every registered optometrist whose name appears or is mentioned in any advertisement of any kind or character shall be presumed to have caused, permitted, and approved the advertising and shall be personally responsible for its material content and character.

13:38-1.2 General advertising practices

(a) The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Accrediting bodies” means any school of optometry, college or university approved by the Commission on Higher Education or the Council on Postsecondary Accreditation of the United States Department of Education or its successor.

“Advertisement” means any attempt directly or indirectly by publication, dissemination, or circulation in print or electronic media which directly or indirectly induces or attempts to induce any person or entity to consider, purchase or enter into an agreement to purchase optometric services, treatment, or ophthalmic materials from an optometrist.

“Electronic media” means and includes radio, television, computer and Internet.

“Optometrist” means any individual holding a license issued by the New Jersey State Board of Optometrists.

“Print media” means newspapers, magazines, periodicals, professional journals, professional letterhead, professional cards, telephone directories, circulars, handbills, flyers, billboards, signs, on premise signs and other similar items, documents or comparable publications, the content of which is disseminated by means of the printed word.

(b) An optometrist may, consistent with the provisions set forth in this section, advertise to the consuming public, through print or electronic media, the availability of optometric services and ophthalmic materials. In any advertising permitted by this subchapter, an optometrist shall not use, employ, permit or condone any practice, statement or format which is false, fraudulent, misleading or deceptive.

(c) An optometrist may advertise fees for services to be rendered and prices for ophthalmic materials offered for sale provided that:

1. The advertised service or ophthalmic materials are provided for not more than the advertised amount;
 2. All advertised fees or prices are clearly and conspicuously displayed;
 3. A statement of a fee for professional services shall be set forth in a single dollar amount and shall not be stated in the form of a range of fees. A statement of price relating to ophthalmic materials may be set forth in a range provided such range is stated in terms of a minimum and maximum dollar amount;
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4. Where a separate or additional fee for the service of dispensing ophthalmic materials is to be charged, the advertisement shall disclose the dollar amount of such fee;

5. Where prices are set forth for ophthalmic materials and services for eyeglasses (lenses and frames), the advertisement shall indicate the type of frames and corrective lenses being offered such as clear or tinted, single vision or multifocal, and plastic, glass or other material. The lenses and frames may be priced separately or as a combined package. If the eye examination is included in the combined package, the advertisement shall also indicate the cost of the eye examination if the combined package is not purchased;

6. When prices are set forth for ophthalmic materials and services for contact lenses, the advertisement shall include, the fee for the minimum eye examination as defined in N.J.A.C. 13:38-2.1, the fee for the contact lens fitting or evaluation, the fee for the type and brand of lens being offered, and the fee for fitting instruction and follow-up care. These items may be priced separately or as a combined package. If a combined package is advertised, the advertisement shall also indicate fee for individual services if the combined package is not purchased. If the cost of a contact lens care kit is not indicated as a separate item or as a part of a combined package, the following statement shall be set forth: "The proper maintenance of certain contact lenses requires sterilization, storage and cleansing in special containers and solutions, the cost of which is not included in this offer." In all advertisements which include a price for a contact lens care

kit, the type of kit shall be set forth. When the price of a contact lens is advertised, a statement shall be made to note that such lens may not be appropriate for all patients; and

7. An optometrist may offer a free or reduced fee eye examination. An advertised offer of a free or reduced fee eye examination shall not be contingent upon a resultant purchase of ophthalmic materials or services.

(d) In the event that an advertisement contains a statement with regard to an advertiser's refund policy, such policy shall clearly and conspicuously set forth all conditions including relevant time periods and dollar amounts to be refunded.

(e) An advertisement shall not state that the optometrist possesses professional superiority with regard to services or materials offered or with regard to apparatus, equipment or technology utilized by the optometrist unless such claims can be substantiated.

(f) When an advertisement contains information on professional credentials, it shall only contain the academic degrees and certifications from bona fide accrediting bodies.

1. The use of the titles of FAAO (Fellow American Academy of Optometry) and FCOVD (Fellow College of Optometrists in Vision Development) shall not be deemed to be a claim of professional superiority.

2. It shall be deemed to be deceptive advertising for an optometrist to utilize the terms "specialist," "specialty" or the substantial equivalent in any advertisement as defined by (a) above; provided, however, that nothing in this section shall prohibit an optometrist from utilizing such terminology as "practice limited to," where the advertising optometrist's practice is exclusively or primarily devoted to one or more of the recognized areas of optometric services, for example, practice limited to low vision services.

3. Nothing in this section shall preclude any truthful and nondeceptive statement in regard to experience in a particular area of optometry (for example, 10 years experience in contact lens fitting and dispensing).

4. Nothing in this section shall preclude any truthful and nondeceptive statement in regard to any residency or fellowship approved by any accredited school of optometry.

(g) For a period of not more than two years from the date of succession to the practice of another optometrist, an optometrist may use a telephone listing of such prior optometrist together with the words “succeeded by” or “successor to” or the substantial equivalent, and for the same time period may also use the prior optometrist’s name in any advertisement.

(h) An optometrist may only be listed in the classified section of any directory under the classification entitled “Optometrist,” “Doctor of Optometry,” or “Optometric Physician.” Such listing shall show the address or addresses for which an active license or certification has been issued to practice optometry in this State.

(i) Any optometrist whose license is either suspended or revoked shall not be permitted to advertise during the period of active suspension or revocation except to announce the closing of the optometrist’s office and/or where the patient records may be available.

(j) It shall be an unlawful advertising practice for an optometrist to:

1. Guarantee that services rendered will result in cures of any optometric or visual abnormality;
2. Fail to retain a copy or duplicate of any advertisement for a period of three years following the date of publication or dissemination. Such copies or tapes shall be made available upon request by the Board or its designee; or
3. Fail to substantiate any objective material claim or representation set forth in an advertisement.

(k) An optometrist may use testimonial advertising provided that:

1. All testimonials involving a specific or identifiable procedure truthfully reflect the actual experience of the patient;
 2. The optometrist shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial. The failure to do so, if required by the Board, may be deemed professional misconduct;
 3. Where an optometrist directly or indirectly provides compensation to a testimonial giver, the fact of such compensation shall be conspicuously disclosed in a clear, legible and readable manner in any advertisement as follows: “COMPENSATION HAS BEEN PROVIDED FOR THIS TESTIMONIAL”; and
 4. The optometrist shall maintain documentation relating to such testimonials for a period of three years from the date of the last use of the testimonial. Such documentation shall include the name, address and telephone number of the individual in the advertisement, the type and amount or value of compensation, and a signed release indicating that person’s willingness to have his or her testimonial used in the advertisement.
1. An optometrist shall include his or her license and certification number in all advertisements.

13:38-1.3 Permissible business structures; referral fees

(a) As used in this section, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.

“Associate” means a closely allied health care professional in the permissible business structure who is the licensee’s partner, employee, fellow shareholder or fellow member in that business structure.

“Board” means the New Jersey State Board of Optometrists.

“Closely allied health care professional” means an individual who provides professional services and is licensed in New Jersey by a professional or occupational licensing board or other State agency, in any of the following fields pursuant to N.J.S.A. 14A:17-3(b): optometry, dentistry, registered professional nursing, physical therapy, or any branch of medicine or surgery.

“Limited liability company” (LLC) means a business corporation organized in compliance with the Limited Liability Company Act, N.J.S.A. 42:2B-1 et seq., to engage in and carry on any lawful business, purpose, or activity, which combines the attributes of both corporation and partnership, and provides the limited liability generally associated with a corporation and the Federal tax treatment of a partnership.

“Limited liability partnership” (LLP) means an association of two or more persons to carry on as owners of a business for profit, which partnership is formed pursuant to an agreement governed by the laws of New Jersey, registered pursuant to N.J.S.A. 42:1-44 and in compliance with N.J.S.A. 42:1-45.

“Permissible business structure” means a sole proprietorship, partnership, including limited liability partnership, or corporation, including limited liability company, all of which are subject to the limitations of (b) below.

“Professional service corporation” means a business entity established pursuant to N.J.S.A. 14A:17-1 et seq., in which all shareholders are licensed by the State of New Jersey to render the same or a closely allied professional service.

“Referral” means the sending or directing of a person to any health care provider other than an associate for diagnosis, evaluation, treatment, or the furnishing of optometric or other health goods or services.

“Remuneration” means any salary, payment, distribution of income, dividend, interest income, loan, bonus, commission, kickback, bribe, rebate, gift, free goods or services of more than nominal value, discount, the furnishing of supplies, facilities or equipment, credit arrangement, and/or waiver of financial obligations.

(b) The following are permissible business structures which may offer optometric services in the State of New Jersey:

1. A sole proprietorship consisting of one licensed optometrist;
2. A partnership, including a limited liability partnership pursuant to N.J.S.A. 42:1-44 et seq., in which all partners are licensed optometrists or closely allied health care professionals;

3. A corporation established consistent with the provisions of the Professional Service Corporation Act (N.J.S.A. 14A:17-1 et seq.) in which all shareholders are licensed optometrists or a combination of licensed optometrists and closely allied health care professionals; and

4. A limited liability company established consistent with the provisions of the Limited Liability Company Act (N.J.S.A. 42:2B-1 et seq.), in which all members are licensed optometrists or a combination of licensed optometrists and closely allied health care professionals.

(c) Optometrists may be employed by a permissible business structure which includes one or more closely allied health care professionals, including at least one licensed optometrist provided that their professional practice is supervised and evaluated by a professional who is an optometrist or physician licensed by the State of New Jersey.

(d) Optometrists may engage in the practice of optometry, as a sole proprietor, partner, shareholder or member, in any permissible business structure in which they are not shielded from liability for their own breaches of professional duties, retain responsibility for the quality of care and appropriateness of their professional judgments, and are assured access to information and involvement in issues pertaining to quality of care, professional judgment, recordkeeping, advertising practices, and the finances of the permissible business structure.

(e) Optometrists shall not receive, solicit, offer, or pay any remuneration as an inducement to make a referral or as compensation for a referral of a patient for a service, product, drug or device or to purchase, prescribe or recommend a service, product, drug, or device.

(f) Optometrists shall not participate in any arrangement or agreement, with any person other than an associate, whereby any remuneration received by that person in payment for the provision of space, facilities, equipment, products, drugs, personnel, marketing or management services used by the optometrists is to be determined or calculated as a fixed percentage of, or otherwise dependent upon, the income or receipts derived from the practice of optometry.

Nothing in this subsection shall preclude an optometrist from entering into a bona fide profit sharing plan or retaining the services of a collection agency.

(g) Any violations of (b) through (f) above shall be deemed professional misconduct pursuant to N.J.S.A. 45:1-21(e).

13:38-1.4 Optometric practice under assumed names and disclosure of practitioner names

(a) Except as may be authorized by the Professional Service Corporation Act, N.J.S.A. 14A:17-1 et seq., a licensed optometrist shall not practice under a name other than his or her own.

(b) A licensed optometrist who is also an officer of a professional service corporation which renders optometric service or sells ophthalmic materials shall:

1. In all advertising placed by such corporation cause to be conspicuously disclosed the name of at least one corporate officer who is licensed to practice optometry within this State;

2. Cause the names of all optometrists who render optometric services in connection with such corporation to be displayed in a conspicuous place at the entrance to the premises from which optometric services are rendered.

3. File with the Board of Optometrists by March 31 of each year a copy of that report required to be filed pursuant to N.J.S.A. 14A:17-15 showing the names and post office addresses of all shareholders, directors, and officers of such corporation. In addition thereto, the report shall include the names and post office addresses of all licensed optometrists employed by the corporation.

(c) It shall be the joint and several responsibility of all corporate officers holding licenses to secure compliance with this section.

(d) In all advertisements for optometric materials and services at a particular location or group of locations, the name and license number of at least one licensee responsible for optometric practice at the individual location or group of locations shall be disclosed. Any licensee's name appearing in an advertisement shall be immediately followed by one of the following designations: O.D., Optometrist, Doctor of Optometry, or Optometric Physician.

(e) A sole practitioner of optometry and all licensed optometrists offering services as partners in a partnership shall cause the names of all licensees offering optometric services in connection with the sole proprietorship or the partnership to be displayed in a conspicuous place at the entrance to the premises from which optometric services are rendered. If the premises contain more than one office, the names of all optometrists who render optometric services in connection with such sole proprietorship or partnership, at that particular location, shall be visible to the public and displayed in a conspicuous place at the entrance of the outer office.

SUBCHAPTER 2. GENERAL RULES OF OPTOMETRIC PRACTICE

13:38-2.1 Minimum examination; record of conditions

(a) Prior to prescribing eyeglasses or contact lenses for a patient, the licensee shall perform the following procedures and shall duly record the findings:

1. Complete history;
 2. Entrance visual acuity findings;
 3. Complete examination of the external eye and adnexae;
 4. Complete examination of the internal parts of the eye;
 5. Corneal measurements taken at the time of the original examination and as subsequently needed in the professional judgment of the optometrist;
 6. Objective refractive findings;
 7. Subjective refractive findings and acuities;
 8. Evaluation of ocular motility and status of binocularity;
 9. Color vision testing at the time of the original examination and as subsequently needed in the professional judgment of the optometrist;
 10. Visual fields screening on all patients unless contraindicated in the professional judgment of the optometrist or by lack of the patient's cooperation;
 11. Tonometry on all patients unless contraindicated in the professional judgment of the optometrist or by lack of the patient's cooperation; and
 12. Complete examination of the anterior segment of the eye using a biomicroscope (slit-lamp) or other equipment with equivalent technological capabilities.
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- (b) Procedures (a)3, 4, 7 and 12 above shall be performed only by the optometrist.
- (c) Where any form of contact tonometry is used in procedure (a)11 above, only the optometrist shall perform the procedure.
- (d) The optometrist may delegate the performance of procedures (a)5 and 6 above only when automated electronic devices are used.
- (e) The accuracy of the findings for all of the procedures in (a) above shall be the exclusive responsibility of the examining optometrist(s).
- (f) Nothing contained in this chapter shall be construed to prohibit vision screening under the direct supervision of an optometrist for the purpose of determining the advisability of a complete optometric examination. For purposes of this section, “direct supervision” means the continuous physical presence of the optometrist who is in a supervisory status at the office location and who is available on-site for consultation, guidance, and instruction during the performance of any delegable procedures by ancillary personnel.

13:38-2.2 Minimum equipment and instrumentation

(a) For the proper performance of a minimum examination as required by N.J.A.C. 13:38-2.1, the following equipment and instrumentation shall be maintained in an optometrist's office:

1. Ophthalmoscope;
2. Instrument for the objective measurement of the refractive status of the eye;
3. Instrument to measure the radius of the curvature of the cornea;
4. Instrument, including but not limited to, trial frame with test lenses and auxiliary prisms, for the measurement of the subjective refractive status of the eye;
5. Instruments to test for stereopsis and fusion;
6. Instruments or charts to measure distance and near visual acuities;
7. Instruments to test color vision;
8. Equipment to measure central and peripheral visual fields;
9. Instruments to measure intraocular pressure;
10. Biomicroscope (slit-lamp), or other equipment with equivalent technological capabilities.

13:38-2.3 Records of examinations and prescriptions; computerized records

(a) Licensees shall prepare contemporaneous, permanent professional treatment records and shall also maintain records relating to billings made to patients or third-party carriers for professional services. All treatment records, bills and claim forms shall accurately reflect the treatment of services rendered. Treatment records shall be maintained for a period of not less than seven years from the date of the most recent entry.

(b) To the extent applicable, professional treatment records shall contain, in addition to those findings required by the minimum examination as set forth in N.J.A.C. 13:38-2.1:

1. The dates of all patient visits, examinations, and treatments;
 2. The patient complaint or reason for visit;
 3. The patient history;
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4. The findings of the examination;
5. Progress notes;
6. Any orders for tests or consultations and the results thereof;
7. Diagnosis or impression;
8. Complete eyeglass or contact lens prescription;
9. The treatment or plan initiated, including specific dosages, quantities and strengths of medications, including the number of refills, if prescribed, administered or dispensed, and recommended follow-up;
10. If the service is rendered in a setting where more than one provider practices, the identity of the optometrist providing treatment and the name of the person dispensing eyeglasses or contact lenses to the patient;
11. Documentation when, in the reasonable exercise of the optometrist's judgment, the communication of examination results is necessary and action needs to be taken but reasonable efforts made by the optometrist responsible for communication have been unsuccessful; and
12. Documentation concerning the decision and justification when, after the required evaluation of a patient for the specifically advertised brand and type of contact lens which attracted or induced the patient to seek such goods, the patient is fitted with another brand or type of contact lens.

(c) Corrections or additions, but no deletions, may be made to an existing record, provided that each change is clearly identified as such and initialed and dated by the licensee.

(d) Treatment records may be prepared and maintained on a personal or other computer but shall be in compliance with the following criteria:

1. The record shall contain no less than two independent forms of identification, such as patient name and record number;
 2. An entry in a patient's treatment record shall be made by the optometrist contemporaneously with the optometric service and shall contain all of the information required in (b) above, and the full printed name of the optometrist providing the care. The system and/or software shall be set up in such a way that all data and findings must be manually entered and are not entered by default;
 3. The optometrist shall finalize or "sign" the entry by means of a confidential personal code ("CPC") and include the date of the "signing." In those practices with multiple licensees, each optometrist shall have his or her own CPC;
 4. The optometrist may dictate a dated entry for later transcription. The transcription shall be identified as "preliminary" until reviewed and finalized as provided in 3, above;
 5. The system used to record the treatment record shall provide an automatic dating of the entry and prepare an automatic back-up file. No other data or findings may be entered automatically by the system. Any additional data or findings shall be entered manually each time a patient's treatment record is updated;
 6. The system shall not allow an entry to be modified in any manner after it is "signed" by means of the CPC. A new entry shall be required to modify a preexisting entry and signed again by means of the CPC;
 7. The system shall have the capability to print on demand a hard copy of all current and historical data contained in each patient record file;
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8. The optometrist shall maintain the safety and security of back-up data and hard copies maintained off premises;
9. The optometrist shall provide to the Board upon request any back-up data and/or hard copies maintained off premises on any requested patient records, together with the following information:
 - i. The name of the computer operating system and patient record management software package containing the requested patient record files and instructions on using such system;
 - ii. Current passwords necessary to access the requested patient record files;
 - iii. Previous passwords if required to access the requested patient record files; and
 - iv. The name of the contact person(s) who provides technical support for the licensee's computer operating system and patient record management software package; and
10. A computer system which does not meet the requirements of this section shall be modified to comply with these requirements. These modifications shall be completed by September 18, 2001. Until such time as these modifications are completed, standard hard copy records shall be maintained.

13:38-2.4 Requirements for issuing prescriptions and dispensing of medications

(a) Every optometrist shall provide the following on all prescriptions:

1. The prescriber's full name, address, telephone number, license number and academic degree or identification of professional practice. This information shall be preprinted on all prescriptions;
2. The full name of the patient;
3. The date of issuance of prescription; and
4. The signature of the prescriber, hand-written.

(b) Every optometrist certified to prescribe pharmaceutical agents pursuant to the provisions of N.J.A.C. 13:38-4 and N.J.S.A. 45:12-9.8 through 9.12 shall, in addition to the information set forth in (a) above, provide the following on all prescriptions for pharmaceutical agents:

1. The optometrist's certification number;
 2. The name, strength and quantity of drug or drugs to be dispensed;
 3. Adequate instruction for the patient, which shall include, but not be limited to, duration, frequency and dosage. The use of "p.r.n." or "as directed" without further instruction shall be deemed insufficient direction.
 4. The number of refills permitted or time limit for refills, or both; and
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5. Every prescription blank shall be imprinted with the words “substitution permissible” and “do not substitute” and shall contain space for the optometrist’s initials next to the chosen option, in addition to the space required for the signature in (a)4 above.

(c) In addition to the provisions of (a) and (b) above, optometrists certified to prescribe pharmaceutical agents pursuant to the provisions of N.J.A.C. 13:38-4 and N.J.S.A. 45:12-9.8 through 9.12 shall comply with the following:

1. The optometrist shall advise all patients by sign or pamphlet or similar notice available in a conspicuous location in the optometrist’s office that the patient may request that the optometrist substitute a generic drug for any prescribed medication.

2. The optometrist shall not dispense a prescription as provided for in N.J.S.A. 45:12-1 in an amount exceeding a 72-hour supply unless the prescription is dispensed at no charge to the patient.

3. The optometrist shall ensure that each medication dispensed directly to a patient is placed in a container or envelope labeled in a legible manner with at least the following information:

- i. The optometrist’s full name, license and certificate number;
- ii. The full name of the patient;
- iii. The date the medication is dispensed;
- iv. The name, strength and quantity of medication dispensed; and
- v. Adequate instructions for the patient regarding the frequency of administration of the medication.

(d) In no instance shall an optometrist sign a blank prescription form or dispense medications without complying with the requirements of this section.

(e) Written prescriptions shall be issued only on New Jersey Prescription Blanks (NJPB), secured from an approved vendor and subject to the required security mandates of the prescription blank program pursuant to N.J.S.A. 45:14-14.

13:38-2.5 (Reserved)

13:38-2.6 (Reserved)

13:38-2.7 (Reserved)

13:38-2.8 Optometrists availability

The examining optometrist shall assure that every patient has access to the optometrist or to a suitable covering doctor in an emergency, during a doctor’s vacation time or during hours when the office is not open.

13:38-2.9 (Reserved)

13:38-2.10 Minimum standards and tolerances

(a) Every pair of lenses, spectacles or eyeglasses provided to a patient shall conform to the following minimum standards and tolerances:

Physical Quality and Appearance	Tolerance
1. Surface imperfections	No pits, scratches (other than hairline), grayness or watermarks will be acceptable
2. Glass defects	No bubbles, striae and inclusions shall be acceptable.
3. Localized power errors	Waves found by visual inspection shall be passable if no determination in image quality is found when the localized area is examined with a standard lens measuring instrument.
4. Refractive powers	0.0 to 6.00 or 0.12 6.25 to 12.00 2 per cent of power. 6.25 to 2.00 2 per cent of power Above 12.00 or 0.25. Maximum cylinder power variation + or - 0.12.
5. Refractive power addition	+ or - 0.12.0.
6. Cylinder Axis	0.12 or 0.37 + or - 3 degrees. 0.50 to 1.00 + or - 2 degrees. 1.12 on up + or - 1 degree.
7. Prism power and location of specified optical center	Vertical + or - 0.25 prism for each lens or a total lens or a total of 1/3 prism imbalance. Horizontal + or - 0.25 prism for each lens or a total of 0.50 prism diopter imbalance; if prism exceeds .50 prism diopter, the optical centers must be within 2 mm. If prism is less than 0.50 prism diopter, the optical centers must be within 4 mm.
8. Segment size inspection.	+ or - 0.5 mm. Pair must be symmetrical upon visual
9. Segment location	As specified within + or - 0.5 mm.

10. Lens size:
 - i. Rimless + or - or 0.5 mm;
 - ii. Bevel, for plastic frames + or - 0.5 mm;
 - iii. Bevel, for metal frames To fit standard specified frames.
Lens shape must match. Edges must be smooth and straight and sharp edge must be removed.
11. Heat-treated and chemically-treated industrial safety eyewear Tolerance for power, size and the like shall be as above, except that minimum thickness edge or center shall meet the requirements of American Standard Z80.1-1972 and subsequent revisions.
12. Heat-treated and chemically-treated dress eyewear Tolerance for power, size and the like shall be as above, except that minimum thickness edge or center shall meet the requirements of American Standard Z80.1-1972 and subsequent revisions.
13. Frame selection and fit Frame shall be selected for the requirements of the prescription and facial contour. Bridge size should fit the nose within 2 mm of its width with flair, and temple length must fit within 5 mm.

(b) When eyeglasses are provided to the patient, the following information shall be recorded in the patient's record:

1. Eye size, bridge size, temple length, frame manufacturer and style, patient pupillary distance, and, if applicable, multi-focal type, segment height and base curve.

(c) Upon completion of the fabrication of corrective lenses and upon dispensing within the State of New Jersey, the lenses or finished eyeglasses shall be verified to assure the accuracy of the prescription and properly fitted to the patient's face.

13:38-2.11 Delegation of duties to ancillary personnel

(a) As used in this section, the following words have the following meanings unless the context indicates otherwise:

1. "Ancillary personnel" means any natural person other than a licensed physician, optometrist, or ophthalmic dispenser or technician who is an employee of a New Jersey licensed optometrist and who performs patient care.
2. "Direct supervision" means the continuous physical presence of the optometrist who is in a supervisory status at the office location and who is available on-site for consultation, guidance, and instruction during the performance of any delegable procedures by ancillary personnel.

(b) An optometrist may delegate any procedure relating to minimum examination requirements as enumerated in N.J.A.C. 13:38-2.1 to ancillary personnel under his or her direct supervision.

(c) The supervising optometrist who delegates any procedure pursuant to (b) above shall:

1. Assume full responsibility for the performance of the delegated procedures by the ancillary personnel; and
2. Ensure that ancillary personnel have received the appropriate level of training necessary to satisfactorily complete the delegated procedures.

(d) An optometrist shall not delegate the following functions or duties to ancillary personnel:

1. Any procedure which must be performed by the optometrist as part of the minimum examination requirements pursuant to N.J.A.C. 13:38-2.1(a), subject to the restrictions as set forth in N.J.A.C. 13:38-2.1(b) through (d);
2. Inserting and removing contact lenses;
3. Determining the fit of contact lenses;
4. Determining the power of contact lenses (over refracting);
5. Determining the method of contact lens cleaning or sterilization;
6. Selecting lens materials (all types);
7. Selecting bifocal types;
8. Selecting tints (except for Rose #1); and
9. Final verification of all ophthalmic goods prior to their dispensing to the patient.

(e) The name of the supervising optometrist and the ancillary personnel shall be indicated on the patient record.

13:38-2.12 Preceptorship program

(a) A New Jersey optometrist, with an active license and therapeutic certification, may act as a preceptor to supervise a fourth-year student of an accredited college of optometry in that optometrist's office under the conditions in this section.

1. The clinical training, when performed in the preceptor's office shall be classified as a preceptorship program.
2. The college of optometry shall submit to the New Jersey State Board of Optometrists a detailed description of its preceptorship program, indicating procedures for monitoring such programs, procedures for selection of preceptors, the number of weeks during which such programs will be in effect, and other pertinent information for the Board's approval.
3. The college of optometry shall provide the Board with the name and address of the preceptor under whose supervision the student shall work, the name and address of the student, and the dates of preceptorship.
4. The college of optometry shall select the preceptors and shall submit those names to the New Jersey State Board of Optometrists. Such preceptor shall have been engaged in the practice of optometry in the State of New Jersey

for at least five years immediately preceding the application. The Board shall issue a Certificate of Preceptorship which shall be valid no longer than one year from the date of issuance and which shall be displayed conspicuously on the office premises of the preceptor. The preceptor shall inform his or her patients of the student's status prior to the submission of the patient to examination by the student.

5. All tests referred to in N.J.A.C. 13:38-2.1 may be performed by the student; provided however that during the performance of any such tests, the preceptor shall be on the premises and immediately available for supervision at all times. All student evaluations of the patient shall be reviewed by the preceptor prior to final determination of the case and before the patient leaves the premises. A preceptor shall at all times be responsible for the effective supervision and direction of the student.

6. The preceptor shall not supervise more than one student and supervision shall not be delegated without the approval of the college of optometry.

7. Under no circumstances shall the student be paid for the preceptorship experience.

8. Failure of the student or preceptor to follow the provisions of this section shall constitute a violation of N.J.S.A. 45:1-14 et seq.

13:38-2.13 Independent doctor of optometry

(a) For the purpose of N.J.S.A. 45:12-9.12 and this chapter, in order to perform as an independent doctor of optometry, a licensee shall:

1. Take no instruction from an ophthalmic dispenser with regard to any aspect of optometric practice and retain authority to exercise professional judgment within accepted standards of professional care with regard to skill, diligence in examinations, allocation of time for professional services, and diagnosis and treatment of patients;

2. Take no instruction from a landlord with regard to any aspect of optometric practice and lease space on the basis of a written lease and only where rent is a fixed fee determined by the fair market value, is for a regular term and not for sporadic use of the space, is not contingent upon patient fees, the number of patients, or the number or type of optometric services;

3. Maintain a separate telephone number;

4. Enter into a written agreement providing that the optometrist shall furnish and be responsible for all advertising for optometric services, materials and fees by that optometrist. Any optometrist advertisement for optometric services, materials and fees by that optometrist which appears near or next to the advertisement of any other entity shall be clearly delineated and set apart by bold lines or a box;

5. Employ, supervise, pay and maintain responsibility for training assistants and employees. If any personnel services are included as part of a rental agreement, such as a receptionist's services, the terms shall be included in the written lease;

6. Furnish his or her own equipment, instruments, and materials; or if these are leased, it shall be for fair market value and the terms shall be included in a written lease;

7. Establish all patient fees for ophthalmic materials and services;
8. Maintain his or her own patient treatment and billing records, separate and apart from any ophthalmic dispenser records, and be responsible for the confidentiality and security of all patient treatment and billing records, whether electronic or hard copy;
9. Establish hours of availability of optometric services and retain responsibility for suitable coverage in an emergency, during vacation, or during hours when the office is closed;
10. Display registration certificate(s) and signs so as to be read on the outside of the office as required by N.J.S.A. 45:12-8.

13:38-2.14 Sexual misconduct

- (a) The purpose of this section is to identify for optometrists licensed by the Board of Optometrists the types of conduct which shall be deemed sexual misconduct.
- (b) As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

“Licensee” means any person licensed to practice optometry in the State of New Jersey.

“Patient” means any person who is the recipient of a professional service rendered by a licensee for purposes of diagnosis, treatment or consultation relating to treatment. “Patient” for purposes of this section also means any person who is the subject of a professional examination even if the purpose of that examination is unrelated to treatment.

“Patient-physician relationship” means an association between an optometric physician and a patient wherein the optometrist owes a continuing duty to the patient to be available to render professional services consistent with his or her training and experience. The performance of any professional service including, but not limited to, the issuance of a prescription or authorization of a refill of a prescription is deemed to be a professional service and evidence of a patient-physician relationship.

“Sexual contact” means knowingly touching a person’s body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee’s own prurient interest or for sexual arousal or gratification. “Sexual contact” includes, but is not limited to, the imposition of a part of the licensee’s body upon a part of the patient’s body, sexual penetration, or the insertion or imposition of any object or any part of a licensee or patient’s body into or near the genital, anal or other opening of the other person’s body. “Sexual contact” does not include the touching of a patient’s body which is necessary for the performance of a generally accepted and recognized optometric procedure.

“Sexual harassment” means solicitation of any sexual act, physical advances, or verbal or non-verbal conduct that is sexual in nature, and which occurs in connection with a licensee’s activities or role as a provider of optometric services, and that either: is unwelcome or offensive to a reasonable person, or creates a hostile workplace environment, and the licensee knows, should know, or is told this; or is sufficiently severe or intense to be abusive to a reasonable person in that context. “Sexual harassment” may consist of a single extreme or severe act or of

multiple acts and may include, but is not limited to, conduct of a licensee with a patient, co-worker, employee, student or supervisee whether or not such individual is in a subordinate position to the licensee.

“Spouse” means either the husband or wife of the licensee or an individual in a long-term committed relationship with the licensee.

(c) A licensee shall not engage in sexual contact with a patient with whom he or she has a patient-physician relationship. The patient-physician relationship is considered ongoing for purposes of this section in all contexts unless:

1. Professional services are actively terminated by way of written notice to the patient and is documented in the patient record; or
2. The last professional services were rendered more than one year ago.

(d) A licensee shall not seek or solicit sexual contact with a patient with whom he or she has a patient-physician relationship and shall not seek or solicit sexual contact with any person in exchange for professional services.

(e) A licensee shall not engage in any discussion of an intimate sexual nature with a patient, unless that discussion is related to legitimate patient needs. Such discussion shall not include disclosure by the licensee of his or her own intimate sexual relationships.

(f) A licensee shall not engage in sexual harassment whether in a professional setting such as an office, hospital, health care facility, or outside of the professional setting.

(g) A licensee shall not engage in any other activity, such as, but not limited to, voyeurism or exposure of the genitalia of the licensee, which would lead a reasonable person to believe that the activity serves the licensee’s personal prurient interest or is for the sexual arousal, the sexual gratification or the sexual abuse of the licensee or patient.

(h) Violation of any of the prohibitions or directives set forth in (c) through (g) above shall be deemed to constitute gross or repeated malpractice pursuant to N.J.S.A. 45:1-21(c) or (d) or professional misconduct pursuant to N.J.S.A. 45:1-21(e).

(i) Nothing in this section shall be construed to prevent a licensee from rendering optometric examinations or treatment to a spouse, providing that the rendering of such service is consistent with accepted standards of optometric care and that the performance of optometric services is not utilized to exploit the patient for the sexual arousal or sexual gratification of the licensee.

(j) It shall not be a defense to any action under this section that:

1. The patient solicited or consented to sexual contact with the licensee; or
 2. The licensee is in love with or held affection for the patient.
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13:38-2.15 Excessive fees

(a) The New Jersey State Board of Optometrists shall review information and complaints concerning allegations of excessive fees charged by licensees of the Board. This section is not intended to impinge upon the strong public policy in favor of competitive, free enterprise economy embodied in the antitrust laws of the United States and the State of New Jersey. The Board shall consider comparable fees charged by licensees not under inquiry that are in a similar type, mode and setting of practice, a similar geographic and economic area, and similar years in practice to the minimum extent necessary to render a determination as to whether a fee is excessive.

(b) A licensee of the New Jersey State Board of Optometrist shall not charge an excessive fee for services. A fee is excessive when, after a review of the facts, a licensee of ordinary prudence would be left with a definite and firm conviction that the fee is so high as to be manifestly unconscionable or overreaching under the circumstances.

(c) Factors which may be considered in determining whether a fee is excessive include, but are not limited to, the following:

1. The time and effort required;
2. The novelty and difficulty of the procedure or treatment;
3. The skill required to perform and interpret the procedure or treatment properly;
4. Any requirements or conditions imposed by the patient or by the circumstances;
5. The nature and length of the professional relationship with the patient;
6. The experience, reputation and ability of the licensee performing the services; and
7. The nature and circumstances under which services are provided.

(d) Unless services are provided during an emergency or other circumstances where opportunity, custom and practice will preclude discussion prior to the rendition of such services, the licensee or his or her designee shall, in advance of providing services, specify or discuss and agree with the patient, the fee or basis for determination of the fee to be charged.

(e) Charging an excessive fee in violation of (b) above shall constitute professional misconduct subjecting the licensee to disciplinary action by the New Jersey State Board of Optometrists.

SUBCHAPTER 3. GENERAL PROVISIONS

13:38-3.1 Change of name

The Board shall issue a new registration certificate to any licensee whose name has been legally changed upon receipt of evidence of the legal name change, the return of the original certificate, together with a fee as set forth in N.J.A.C. 13:38-5.1.

13:38-3.2 Renewal of registration certificates

All registration certificates shall be renewed on or before April 30 of the odd numbered years, subject to the provisions of N.J.S.A. 45:12-9.

13:38-3.3 Military service

Any licensee of the Board who is engaged in active duty in the military service of this country shall not be required to pay the renewal fees for any year during which he or she is in service.

13:38-3.4 (Reserved)

13:38-3.5 Requirements for application for licensure

(a) An applicant seeking licensure shall satisfy the character and education requirements set forth in N.J.S.A. 45:12-1 et seq.

(b) An applicant seeking licensure shall submit the following to the Board:

1. A completed application form supplied by the Board that requires the applicant to provide identifying information;
2. A non-refundable application fee set forth in N.J.A.C. 13:38-5.1;
3. An official transcript(s) indicating that the applicant has satisfied the educational requirements as set forth in N.J.S.A. 45:12-1 et seq.;
4. Verification of the test scores from the National Board of Examiners in Optometry indicating that the applicant successfully passed parts I and II of the written examination conducted by the National Board of Examiners in Optometry; and
5. Verification of test scores from the North East Region Clinical Optometric Assessment Testing Services (NERCOATS) or the National Board of Examiners in Optometry indicating that the applicant successfully passed an optometric clinical skills assessment test administered by NERCOATS or the Part III Patient Care portion of the National Board of Examiners in Optometry test.

(c) When an applicant is seeking licensure and is also seeking therapeutic pharmaceutical agents (TPA) certification at the same time, the licensee shall comply with (b) above and the TPA certification requirements set forth at N.J.A.C. 13:38-4.2(b) and (c), except that the applicant is not required to pay two application fees.

13:38-3.6 (Reserved)

13:38-3.7 Suspended or revoked licenses

(a) No optometrist shall accept employment or association with, nor shall continue in the employment of or association with, any optometrist whose license to practice optometry has been suspended or revoked during the period of the suspension or revocation.

(b) It shall be the duty and responsibility of any optometrist, before employing, engaging the services of, or accepting as an associate, another optometrist, to ascertain that the optometrist possesses an active registration renewal certificate or an active branch office certificate for the address at which the employee or associate will practice optometry.

13:38-3.8 Branch offices

(a) A branch office certificate issued for one address is transferable to a different address. A licensee desiring to change a branch office address shall file a change of address form together with the fee as set forth in N.J.A.C. 13:38-5.1 and shall return the branch office certificate previously issued.

(b) A licensee desiring an additional branch office certificate shall file an application for a new branch office certificate and submit the fee as set forth in N.J.A.C. 13:38-5.1.

SUBCHAPTER 4. THERAPEUTIC PHARMACEUTICAL AGENTS (TPA) CERTIFICATION

13:38-4.1 Purpose and scope

(a) The rules of this subchapter implement the provisions of the Consumer Access to Eye Care Act of 1991, N.J.S.A. 45:12-9.8 through 9.12.

(b) This subchapter shall apply to a licensed optometrist utilizing pharmaceutical agents, as defined and limited in N.J.S.A. 45:12-9.8 through 9.12.

13:38-4.2 Application for therapeutic pharmaceutical agents (TPA) certification; general requirements

(a) An optometrist licensed in this State who wishes to use pharmaceutical agents for treatment purposes as permitted by N.J.S.A. 45:12-9.8 through 9.12 shall be certified by the Board prior to prescribing or dispensing such agents.

(b) An applicant seeking therapeutic pharmaceutical agents (TPA) certification shall submit the following to the Board:

1. A completed TPA application form supplied by the Board that requires the applicant to provide identifying information;
2. A non-refundable application fee set forth in N.J.A.C. 13:38-5.1;
3. Verification that the applicant has successfully completed the educational requirements set forth in N.J.A.C. 13:38-4.3. The applicant shall obtain the required verification from the school where the applicant completed the educational requirements; and
4. Verification of test scores that the applicant has successfully passed the examination requirements set forth in N.J.A.C. 13:38-4.4.

(c) An applicant who satisfies all of the requirements set forth in (b) above shall, upon payment of the initial certification fee set forth in N.J.A.C. 13:38-5.1, be certified by the Board to use pharmaceutical agents as defined and limited in N.J.S.A. 45:12-9.8 through 9.12.

13:38-4.3 Educational requirements for TPA certification

Each applicant seeking TPA certification shall be required to successfully complete all educational requirements in ocular pharmacology at a school duly accredited by the United States Department of Education and the Council on Postsecondary Accreditation. This education shall be no less than that required of currently enrolled students as part of their requirements for graduation from that school. If an applicant attends a school other than a college of optometry, the education necessary to satisfy the ocular pharmacology educational requirement shall be substantially equivalent to that of a college of optometry.

13:38-4.4 Examination requirements for TPA certification

Each applicant for TPA certification shall be required to successfully pass the Treatment and Management of Ocular Disease Examination, or any successive examination, administered by the National Board of Examiners in Optometry.

13:38-4.5 Biennial TPA certification renewal

(a) An application for certification renewal shall be issued by the Board upon the applicant's submission of proof that during the two calendar years immediately preceding application for renewal the applicant successfully completed 20 continuing professional education credits in Board-approved courses devoted to ocular pharmacology, ocular manifestation of systemic disease treatable by pharmacological agents, or ocular pathology treatable by pharmacological agents. Each credit shall represent or be equivalent to one hour of actual course attendance.

(b) Ten credits of the 20-credit continuing education requirement set forth in (a) above shall be in addition to the 50-credit continuing education requirement for license renewal. Credit for a continuing education course which is approved as fulfilling either the certification or the license renewal requirements shall be applied only once, either to the certification or to the license renewal requirement.

SUBCHAPTER 5. FEE SCHEDULE

13:38-5.1 Fee schedule

(a) The following fees shall be charged by the Board:

- | | |
|--|-----------|
| 1. Application fee: | \$125.00; |
| 2. Initial license fee: | |
| i. During the first year of a biennial renewal period: | \$250.00; |
| ii. During the second year of a biennial renewal period: | \$125.00; |
| 3. Biennial renewal fee-active certificate: | \$250.00; |
| 4. Biennial renewal fee-non-active certificate: | \$100.00; |

5. Initial branch office certificate:	
i. During the first year of a biennial renewal period:	\$250.00;
ii. During the second year of a biennial renewal period:	\$125.00;
6. Biennial renewal fee-branch office certificate:	\$250.00;
7. Initial certification fee:	
i. If paid during the first year of a biennial renewal period:	\$210.00
ii. If paid during the second year of a biennial renewal period:	\$105.00
8. Biennial renewal fee-certification to prescribe:	\$210.00
9. Each additional certificate-certification to prescribe	\$25.00
10. Change of address fee-active or non-active:	\$25.00;
11. Transfer fee-non-active to active:	
i. During the first year of a biennial renewal period:	\$150.00;
ii. During the second year of a biennial renewal period:	\$75.00;
12. Penalty for late renewal of certificate:	\$200.00;
13. Endorsement fee:	\$75.00;
14. Duplicate wall certificate:	\$25.00;
15. Letter of certification:	
i. License:	\$40.00;
ii. Continuing education credit:	\$50.00;
16. Preceptorship certificate:	\$25.00;
17. Reinstatement fee:	\$200.00.

SUBCHAPTER 6. RECORDS

13:38-6.1 Availability of records

(a) For purposes of this subchapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

“Authorized representative” means a person who has been designated, pursuant to a court order or a signed writing by the patient, to exercise the patient’s rights under this section. An authorized representative may be the patient’s attorney or an employee of an insurance carrier with whom the patient has a contract which provides that the carrier be given such access in order to assess a claim for reimbursement. If the patient is a minor, a parent or

guardian shall be deemed to be an authorized representative except where a court order makes a specific designation to the contrary.

“Patient” means any person who is the recipient of optometric services rendered by a licensee for the purpose of examination, treatment, or consultation relating to the treatment.

(b) The patient record, or a copy thereof, shall be released upon written request, to the patient, the patient’s authorized representative, or to another optometrist or physician acting on behalf of the patient. A patient record or portion thereof shall be released to any person or other entity only upon the receipt of a signed release from the patient whose records are being requested. An optometrist may charge a fee for the reproduction of records, which shall be no greater than \$.50 per page or \$100.00 for the entire record, whichever is less. If the record requested is 10 pages, the optometrist may charge up to \$10.00 to cover postage and the miscellaneous costs associated with retrieval of the record. If agreeable to the individual requesting the record, the optometrist may send a summary in lieu of the actual record and the charge for the summary shall not exceed the cost that would be charged for the actual record.

(c) An optometrist shall, free of charge, release a copy of a patient’s contact lens prescription directly to the patient or to a New Jersey licensed ophthalmologist, optometrist, or ophthalmic dispenser upon either the oral or written request of a patient or the New Jersey licensed eye care provider acting on the patient’s behalf. If an optometrist releases a contact lens prescription directly to a patient, the optometrist shall provide the patient with a written warning, which shall include the following language in boldface, underlined and in capital letters:

WARNING: YOU SHOULD BE AWARE THAT YOUR EYES MAY CHANGE WITH TIME AND CONTACT LENSES THAT WERE INITIALLY FITTING PROPERLY MAY NO LONGER BE APPROPRIATE AND MAY ENDANGER YOUR EYE HEALTH. YOU SHOULD SEE YOUR EYE DOCTOR PERIODICALLY TO ENSURE YOUR LENSES ARE FITTING PROPERLY.

1. As used in this section, a “contact lens prescription” shall include those specifications contained within the doctor’s records that are necessary for the preparation of contact lenses for a patient. A contact lens prescription is not complete unless and until a patient has been fitted for the contact lenses being prescribed and the fit has been fully evaluated over at least one follow-up visit and determined to be satisfactory. A contact lens prescription shall include a date of expiration that cannot exceed two years from the date of the last contact lens evaluation and may be of shorter duration depending on the professional judgment of the optometrist.

(d) Upon the patient’s request, a copy of the patient’s prescription for eyeglasses shall be given, free of charge, to the patient or to another optometrist, ophthalmologist or optician acting on the patient’s behalf.

(e) Subsections (c) and (d) above relative to the release of contact lens and eyeglass prescriptions shall not apply unless the patient has satisfied all financial obligations to the optometrist.

(f) If a licensee ceases to engage in practice or it is anticipated that he or she will remain out of practice for more than three months, the licensee or designee shall:

1. Establish a procedure by which patients may obtain their records or transfer those records to another licensee who will assume the responsibilities of the practice;

2. Publish a notice of the cessation and the established procedure for the retrieval of records in a newspaper of general circulation in the geographic location of the licensee's practice, at least once a month for the first three months after the cessation; and

3. File a notice of the established procedure for the retrieval of records with the Board of Optometrists.

SUBCHAPTER 7. CONTINUING PROFESSIONAL OPTOMETRIC EDUCATION

13:38-7.1 Active registration renewal; continuing education requirement

Any applicant who applies for an active registration renewal certificate for a biennial period shall confirm on the renewal application that the applicant has completed continuing professional optometric education programs of the types and number of credits specified in N.J.A.C. 13:38-7.3. The Board shall not issue an active registration renewal certificate to any applicant who fails to confirm that the applicant has completed the continuing professional optometric education requirements unless the Board issues the applicant a waiver pursuant to N.J.A.C. 13:38-7.7.

13:38-7.2 Nonactive registration renewal and reactivation of license; continuing education requirement

(a) Any licensee who has a nonactive certificate shall be exempt from the continuing professional optometric education requirements set forth in this subchapter.

(b) Any licensee seeking to reactivate a nonactive certificate shall provide the Board with evidence of having maintained proficiency by completing the professional optometric education requirements set forth at N.J.A.C. 13:38-7.3(a) during the two calendar years immediately preceding the application for reactivation.

13:38-7.3 Credit hour requirements

(a) An applicant for an active registration renewal certificate shall complete, during the preceding biennial period, a minimum of 50 credits of continuing professional optometric education. At least 25 of the 50 credits shall consist of courses or programs classified as therapeutic pharmaceutical agents (TPA) credits and shall be primarily devoted to the diagnosis, treatment and management of ocular disease, ocular pathology or the ocular manifestation of systemic disease. The remaining general continuing professional optometric education credits shall be in content areas set forth in N.J.A.C. 13:38-7.4.

(b) An applicant who initially obtains a certificate within the first year of a biennial period shall complete at least 25 of the minimum required credits of continuing professional optometric education. At least 12.5 of the 25 credits shall consist of courses or programs classified as TPA credits and shall be devoted to the subject matter set forth in (a) above.

(c) An applicant who initially obtains a certificate within the second year of a biennial period shall be exempt from completing continuing professional optometric credits for that biennial renewal period.

(d) A licensee who completes more than the required 50 credits in any biennial period may carry up to 20 credits into any succeeding biennial period. Any credits to be carried over shall be earned in the last one year of the biennial renewal period and shall be applied to the continuing professional optometric education requirements and shall not be applied to the TPA requirements.

(e) Any continuing education courses or programs directed or ordered by the Board to be taken by a licensee as all or part of a disciplinary or remedial measure or to remediate a deficiency in continuing professional optometric education credits for a prior biennial renewal period shall not be eligible to fulfill the mandatory continuing professional optometric education requirements for a subsequent biennial renewal period as set forth in this subchapter.

13:38-7.4 Approved course offerings

(a) The Board shall grant continuing professional optometric education credit only for courses or programs that have significant educational or practical content which deal with matters related to the practice of optometry or with the professional responsibilities or ethical obligations of licensees, such as the following:

1. Clinical Optometry: general optometry; contact lenses; ophthalmic lens design; low vision; functional vision; principals of diagnosis; HIV control; infection control;
2. Ocular Disease and Management: treatment and management of ocular disease:anterior segment; treatment and management of ocular disease: posterior segment; glaucoma; refractive surgery management; peri-operative management of ophthalmic surgery;
3. Related Systemic Disease: ocular/systemic disease; pharmacology; and
4. Optometric Practice Management: jurisprudence; practice management; managed care courses or programs related to the practice of optometry, except that estate planning, financial or investment/tax planning, personal health, the selling of ophthalmic materials, or other similar subjects shall not be acceptable for credit.

(b) All courses or programs offered by the following sources and providers shall be deemed to be automatically approved and a licensee may obtain all 50 continuing professional optometric education credits from the following:

1. Post-graduate courses or programs in the professional skills of optometric practice and scientific courses or programs, which are accredited by the United States Department of Education or the Council on Postsecondary Accreditation;
2. Continuing professional optometric education courses or programs that consist of educational and scientific courses, which are approved by the Council on Optometric Practitioner Education (COPE); or
3. A residency, which is a one year post-OD training program at an accredited college of optometry or accredited by the Accreditation Council on Optometric Education (ACOE) of the American Optometric Association, or a fellowship, which is a one year post-residency training program at an accredited college of optometry or accredited by the ACOE of the American Optometric Association in a specialty area.

(c) Sponsors submitting applications for pre-approval of continuing professional optometric education programs or courses which award three credits or less shall submit to the Board, on a form provided by the Board, no less than 45 days prior to the date the program or course is to be offered. Such courses or programs shall be in compliance with N.J.A.C. 13:38-7.8 and cover topics outlined at (a) above.

(d) The Board shall grant a maximum of 20 of the mandatory 50 continuing professional optometric education credits, including a maximum of 10 of the mandatory 25 TPA credits required, from any or all of the following:

1. Videotape, audiotape, computer media, Internet, journal, or correspondence courses or programs. The course or program shall include an examination at the end of the course or program. Credit for correspondence and other individual study courses or programs will be given only in the renewal period in which the course is completed with a successful final examination. TPA credits may be obtained from participating in any of these courses that are primarily devoted to the diagnosis, treatment and management of ocular disease, ocular pathology or the ocular manifestation of systemic disease;
2. Structured grand rounds, which is a presentation, with a formal outline of course or program material, of clinical cases involving actual patient encounters and the lecture and discussion of the diagnosis and treatment of the particular patient condition. Non-structured grand rounds that consist of observation of individual patient care shall not be accepted for credit. TPA credits may be obtained from participating in structured grand rounds that are primarily devoted to the diagnosis, treatment and management of ocular disease, ocular pathology or the ocular manifestation of systemic disease;
3. Hands-on demonstrations of instrumentation when accompanied by didactic lectures. TPA credits may be obtained from participating in hands-on demonstrations of instrumentation that are primarily devoted to the diagnosis, treatment and management of ocular disease, ocular pathology or the ocular manifestation of systemic disease;
4. Interactive workshops which include demonstrations and applications of hands-on techniques and skills in optometric procedures and instrumentations accompanied by didactic lectures. TPA credits may be obtained from participating in interactive workshops that are primarily devoted to the diagnosis, treatment and management of ocular disease, ocular pathology or the ocular manifestation of systemic disease;
5. Preparation and presentation of a continuing professional optometric education lecture. TPA credits may be obtained from preparing and presenting continuing professional optometric education lectures that are primarily devoted to the diagnosis, treatment and management of ocular disease, ocular pathology or the ocular manifestation of systemic disease;
6. Preparation of an educational or scientific article authored and published in a professional refereed journal. TPA credits may be obtained from preparing an educational or scientific article authored and published in a professional refereed journal that is primarily devoted to the diagnosis, treatment and management of ocular disease, ocular pathology or the ocular manifestation of systemic disease; or
7. The Board shall grant a maximum of 10 continuing professional optometric education credits per biennial renewal period for optometric practice management or managed care courses or programs relating to the practice of optometry. Continuing professional optometric education credit shall not be granted in courses or programs taken in the following subjects: estate planning, financial or investment/tax planning, personal health, the selling of ophthalmic materials, or other similar subjects.

13:38-7.5 Sources of continuing professional optometric education credit and credit-hour calculation

(a) The Board shall grant credit only for continuing professional optometric education courses or programs that are at least one instructional hour long. For purposes of this subchapter, an “instructional hour” represents a 60-minute clock hour with no less than 50 minutes of educational content within the hour. Courses or programs may include one 10-minute break for each instructional hour. Successful completion of an entire course segment of instruction is required in order to receive any continuing professional optometric education credit for that segment.

(b) The Board shall grant a licensee continuing professional optometric education for each biennial period as follows:

1. Attendance at continuing professional optometric education courses or programs: one credit for each hour of attendance;
2. Coursework in a post-graduate educational program related to the profession of optometry: three credits for each course credit awarded;
3. Authoring an educational or scientific article authored and published in a professional refereed journal within the preceding biennial period: three credits per article;
4. Successful completion of videotape, audiotape, computer media, Internet, journal, and correspondence courses or programs: a maximum of two credits per course;
5. Structured grand rounds and hands-on demonstrations of instrumentation: one-half credit for each hour of attendance;
6. Interactive workshops: one credit for each hour of attendance;
7. Preparation and presentation of a continuing professional optometric education lecture course or program: two credits for each hour of a new presentation up to a maximum of twelve credits. For purposes of this paragraph, "new" represents a course or program that the licensee has not taught previously in any educational setting. One credit for each hour of a presentation shall be given for subsequent sessions involving substantially identical subject matter up to a maximum of 12 credits, provided the original material has been updated and subject to the credit limits of N.J.A.C. 13:38-7.4(d); and
8. A residency or a fellowship, as defined in N.J.A.C. 13:38-7.4(b)3: 25 credits, of which 12.5 shall be TPA credits, upon completing each residency or fellowship.

13:38-7.6 Documentation of continuing professional optometric education credit

a) Each licensee shall maintain a record of all continuing professional optometric education activity completed and shall submit evidence of completion of the credit requirements to the Board upon request. Each licensee shall obtain from the continuing education course or program sponsor and retain for a period of at least four years following the renewal a record of attendance which shall include, at a minimum, the following:

1. The participant's name and New Jersey State Board of Optometrists license number;
 2. The title and, if the title does not adequately describe the course content, subject matter of the course;
 3. The name of the instructor;
 4. The course or program sponsor;
 5. The date and location of the course or program;
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6. The number of continuing education hours and credits awarded;
7. The signature of a course or program official or other verification of successful completion by the course or program sponsor; and
8. The course outline and curriculum vitae for those courses or programs not approved pursuant to N.J.A.C. 13:38-7.4(b) and (c).

(b) A licensee shall verify completion of academic coursework by an official transcript.

(c) A licensee who completes a videotape, audiotape, computer media, Internet, journal, or correspondence course or program shall retain the certification of the successful final examination completed at the end of the course or program.

(d) The Board shall monitor compliance with the mandatory continuing professional optometric education requirement by conducting a random audit of licensees, who, upon request shall provide proof of successful completion of continuing professional optometric education credits.

13:38-7.7 Waiver of continuing professional optometric education requirements

(a) The Board may waive continuing professional optometric education requirements on an individual basis for reasons of hardship such as illness, disability, active service in the military, or other good cause.

(b) A licensee who seeks a waiver of the continuing professional optometric education requirements shall provide to the Board, in writing, the specific reasons for requesting the waiver and such additional information as the Board may request in support of the waiver.

13:38-7.8 Responsibilities of continuing education sponsors for courses/programs with three credits or less

(a) A continuing education sponsor seeking pre-approval for a course/program awarding three credits or less shall provide the Board, in writing on a form provided by the Board, information which demonstrates that the course meets the following requirements:

1. The course or program is offered in a subject matter and in a format permissible pursuant to the provisions of this subchapter;
2. The course or program is at least one instructional hour in length, but not more than three instructional hours in length; and
3. The course or program is conducted by an instructor or discussion leader who submits a curriculum vitae and meets one of the following criteria:

i. An optometrist with at least five years of experience in the lecture subject matter;

ii. An individual holding an O.D., M.D., Ph.D. or a substantially equivalent international degree who is either board certified or has special expertise in the lecture subject matter; or

iii. A licensed professional who has special expertise in the lecture subject matter.

(b) Applications for pre-approval of continuing professional optometric education courses or programs shall be submitted by the course or program sponsor on the form provided by the Board no less than 45 days prior to the date the course or program is to be offered. Incomplete applications shall be returned to the sponsor and may result in the failure to grant pre-approval of the course or program.

(c) The Board shall not grant post approval to a sponsor for a course or program; however, the Board may grant a licensee, upon audit, continuing professional optometric education credit for courses or programs which have not been pre-approved if the Board determines that the course or program has significant educational or practical content which deal with matters related to the practice of optometry or with the professional responsibilities or ethical obligations of licensees, such as those areas outlined in N.J.A.C. 13:38-7.4.

(d) The sponsor shall not make substantive changes to an approved course or program, such as a change in course content or instructor, without prior notice to and pre-approval by the Board.

(e) The sponsor shall monitor attendance at each approved course or program and furnish to each enrollee a verification of attendance, which shall include at least the following information:

1. The title, subject matter, if the title does not adequately describe the course content, name of instructor, date, and location of course or program;
2. The name and New Jersey State Board of Optometrists license number of each attendee;
3. The number of continuing education hours and credits awarded; and
4. The name of the sponsor and signature of officer or responsible party or other verification of successful completion by the course or program sponsor.

(f) Continuing education courses or programs shall be offered on a nondiscriminatory basis. Membership organizations may discount the cost of attending continuing professional optometric education courses or programs for dues-paying members provided the fee differential complies with N.J.S.A. 45:12-9.2.

CHAPTER 45C
UNIFORM REGULATIONS

SUBCHAPTER 1. LICENSEE DUTY TO COOPERATE AND TO COMPLY WITH BOARD ORDERS

13:45C-1.1 Applicability, scope and definitions

(a) This subchapter shall apply to all licensees of any board, committee or sub-unit within the Division of Consumer Affairs.

(b) For the purpose of this subchapter, “licensee” shall mean any licensee, permittee, certificate holder or registrant of:

1. The Division of Consumer Affairs;
2. Any professional or occupational licensing board within the Office of Professional/Occupational Boards and any committee, or other subunit of a board or committee located within the Division;
3. The Office of Consumer Protection; or
4. The Legalized Games of Chance Control Commission.

13:45C-1.2 Licensee’s duty to cooperate in investigative inquiries

(a) A licensee shall cooperate in any inquiry, inspection or investigation conducted by, or on behalf of, a board, the Director or the licensee’s licensing agency into a licensee’s conduct, fitness or capacity to engage in a licensed profession or occupation where said inquiry is intended to evaluate such conduct, fitness or capacity for compliance with applicable statutory or regulatory provisions.

(b) A licensee’s failure to cooperate, absent good cause or bona fide claim of a privilege not identified in N.J.A.C. 13:45C-1.5 as unavailable, may be deemed by the board, the Director, or the licensing agency to constitute professional or occupational misconduct within the meaning of N.J.S.A. 45:1-21(e) or the agency’s enabling act and thus subject a licensee to disciplinary action pursuant to N.J.S.A. 45:1-21(h) or the agency’s enabling act.

13:45C-1.3 Specific conduct deemed failure to cooperate

(a) The following conduct by a licensee may be deemed a failure to cooperate and, therefore, professional or occupational misconduct and grounds for suspension or revocation of licensure:

1. The failure to timely respond to an inquiry to provide information in response to a complaint received concerning licensee conduct;
 2. The failure to timely provide records related to licensee conduct;
 3. The failure to attend any scheduled proceeding at which the licensee’s appearance is directed. In the event that a licensee elects to retain counsel for the purpose of representation in any such proceeding, it shall be the licensee’s
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responsibility to do so in a timely fashion. The failure of a licensee to retain counsel, absent a showing of good cause therefor, shall not cause an adjournment of the proceeding;

4. The failure to timely respond or to provide information requested pursuant to a demand under N.J.S.A. 45:1-18 or other applicable law or to provide access to any premises from which a licensed profession or occupation is conducted. Included within this paragraph shall be the failure to respond to any demand for statement or report under oath, the failure to permit the examination of any goods, ware or item used in the rendition of the professional or occupational service and the failure to grant access to records, books or other documents utilized in the practice of the occupation or profession;

5. The failure to answer any question pertinent to inquiry made pursuant to N.J.S.A. 45:1-18 or other applicable law unless the response to said question is subject to a bona fide claim of privilege;

6. The failure to make proper and timely response by way of appearance or production of documents to any subpoena issued pursuant to N.J.S.A. 45:1-18 or as may otherwise be provided by law; or

7. The failure to provide to the Board, the Director or the licensing agency timely notice of any change of address from that which appears on the licensee's most recent license renewal or application.

13:45C-1.4 Failure to comply with Board orders as professional or occupational misconduct

The failure of a licensee to comply with an order duly entered and served upon the licensee or of which the licensee has knowledge shall be deemed professional or occupational misconduct.

13:45C-1.5 Unavailability of privileges in investigative or disciplinary proceedings

(a) In any investigative inquiry conducted pursuant to N.J.S.A. 45:1-18 or in any disciplinary proceeding conducted pursuant to N.J.S.A. 45:1-21, or as may otherwise be authorized by law, the physician-patient privilege, psychologist-patient privilege, marriage and family therapist-client privilege, professional counselor-client privilege, associate counselor-client privilege, social worker-client privilege and the alcohol and drug counselor-client privilege shall be unavailable.

(b) Any statements or records otherwise subject to a claim of the stated privileges which may be obtained by the Board, its agent or the Attorney General pursuant to N.J.S.A. 45:1-18 shall remain confidential and shall not be disclosed unless so ordered by a court of competent jurisdiction, the appropriate licensing board or the Office of Administrative Law in a contested case.

13:45C-1.6 Maintenance of and access to statements, records or other information that is subject to a privilege declared unavailable

(a) Any statements, records or other information which may be subject to any privilege declared unavailable in this subchapter shall be maintained in a secure place and manner by:

1. The evidence custodian within the Division of Consumer Affairs, Enforcement Bureau;

2. The professional or occupational licensing board and the committee or other subunit of a board or committee located within the Division which has a direct connection with, or a need for access to, the matter to which the statements, records or other information pertain; or

3. A Deputy Attorney General.

(b) Except as may be otherwise ordered as provided in the subchapter, access to statements, records or other information shall be afforded only to employees of the Attorney General, the Enforcement Bureau, or the Board or other subunit of the Division having a direct connection with, or a need for access to, the matter to which the statement, records or other information pertain.

(c) The statements, records or other information shall be retained only for the period of time during which an investigation remains open or until the completion of all administrative or judicial proceedings relating thereto, at which time they shall be returned to the licensee or other person from whom they were obtained. In the absence of such licensee or other person, the statements, records or other information shall be returned to the patient, where appropriate.
